EXHIBIT VOLUME I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1962

No. [redacted]142

THE SHOTWELL MANUFACTURING COMPANY, ET AL., PETITIONERS,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 9, 1961
CERTIORARI GRANTED DECEMBER 18, 1961

SUPREME COURT OF THE UNITED STATES

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No. 142

THE SHOTWELL MANUFACTURING COMPANY, ET AL., PETITIONERS,

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VOLUME I

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		Original	Print
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		Original	Print
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		Original	Print
84	Contract, dated February 7, 1946, betwee Cargill and Penick & Ford for 5 cars of corn; marked "Shotwell" in pencil	549	483
85	Contract, dated February 6, 1946, between Daniel F. Rice & Co. and Penick & Ford for 1 car of corn; marked "Shotwell" in pencil	551	484
86	Contract, dated February 4, 1946, between Cargill and Penick & Ford for 7 cars of corn; marked "Shotwell" in pencil	553	485
87	Contract, dated February 2, 1946, between Daniel F. Rice & Co. and Penick & Ford for 1 car of corn; marked "Shotwell" in pencil	555	486
88	Certified copy of letter, dated May 1, 1946, from Chester Bowles to Will Clayton, Assistant Secretary of State	557	487
89	Certified copy of memorandum, dated May 2, 1946, from Robert H. Shields to Secretary of Agriculture	560	490
90	Certified copy of page 3 of Weekly Highlight Report No. 26 dated April 4, 1946, from Robert Marks, Chief, Regional Food Enforcement Section, Chicago, Illinois, to Herman Greenberg, Director, Food Enforcement Division, Washington, D. C	565	496
91	Certified copy of "Report on Economic Effects of Grain Exchange Actions Affecting Futures Trading during the first six months of 1946" entered by the Federal Trade Commission February 4, 1947	567	498
93	Certified copy of appointment, December 19, 1952, of Harold E. Sullivan as Master in Chancery, Circuit Court of Cook County	660	592
94	Letter, dated September 7, 1950, from Sullivan to James B. McCahey	664	596
95	Letter, dated September 30, 1953, from R. B. Shipley, Director, Passport Office, Department of State to Alan Y. Cole re certain information from passport file of David George Lubben	666	598

		Original	Print
95A-B	Photostat of passport application, dated August 3, 1948, of David George Lubben	668	600
96	Treasury Department Mimeograph entitled "Revision of Address by J. P. Wenchel entitled 'Tax Frauds and Voluntary Disclosures.'"	670	602
97	Photostat of memorandum dated May 2, 1947, to officers and employees of the Internal Revenue Service, calling their attention to address to be given by J. P. Wenchel on May 24, 1947	682	620
98	Certified copy of Com. Mimeograph Coll. No. 4201, R. A. No. 722, dated July 2, 1934, re voluntary disclosure policy	684	621
99A-C	Subpoenas duces tecum directed to Penick & Ford, American Maize, Corn Products Refining and Hubinger	696	637
100A-B	Summary of Shotwell Corn Syrup Purchases from Union Sales Corp., 1941	705	649
100C	Summary of Shotwell Corn Syrup Purchases from A. E. Staley Mfg. Co., 1941	709	651
100D	Summary of Shotwell Corn Syrup Purchases from Penick & Ford, 1941	711	652
100E	Summary of Shotwell Corn Syrup Purchases from Corn Products Sales Co., 1941	713	653
100F	Summary of Shotwell Corn Syrup Purchases from Anheuser-Busch, 1941	715	654
100G	Summary of Shotwell Corn Syrup Purchases from American Maize Products Co., 1941	717	655
100H	Recapitulation of Shotwell Corn Syrup Purchases, 1941	719	656
100I	Summary of Shotwell Starch Purchases from A. E. Staley Mfg. Co., 1941	721	657
100J-K	Summary of Shotwell Starch Purchases from Corn Products Sales Co., 1941	723	658
100L	Summary of Shotwell Starch Purchases from Certified Products Co., 1941	727	660
100M	Summary of Shotwell Starch Purchases from American Maize Products Co., 1941	729	661

		Original	Print
102	Summary of Shotwell Corn Syrup Purchases, 1941, 1945, 1946	731	662
103	Summary of Shotwell Corn Sugar Purchases, 1941, 1945, 1946	733	663
104	Summary of Shotwell boiling starch purchases, 1941, 1945, 1946	734	664
105	Summary of Shotwell Moulding Starch Purchases, 1941, 1945, 1946	736	665
106	Summary of Shotwell Purchases of Corn Products, 1941, 1945, 1946	738	666
107	Summary of Shotwell Purchases of Corn Syrup from American Maize, Corn Products, and Penick & Ford, 1941	740	667
108	Summary of Shotwell Corn Syrup Purchases, 1945, 1946	741	668

[fol. 1]

GOVERNMENT EXHIBIT 6A

Sheet No.____

Terms

Rating

Credit Limit

NAME Shatwell Mfg Co

ADDRESS

Government Exhibit 6A Defendants Exhibit

In the District Court of the United States, Northern District of Illinois, Eastern Division

No.

Roy E. Fuller - Official Court Reporter

Idem. Rec'd. / Report / Barnes J.

No. 6-6—Form A

Phoenix Stationery & Printing Co.

1153 Broadway, New York

WATKINS 9-5400-1

FILED 52 C 143

FEB 19 1954

AT O'CLOCK

ROY H. JOHNSON

CLERK

DATE		ITEMS	FOLIO	✓	DEBITS	DATE		ITEMS	FOLIO	✓	CREDITS
June	13		Ad 1	a	1501 30	May	27		21	a	651 30
July	20		C20	b	651 30		27		21	a	850 —
Aug	9		C26	c	1 52 60 / 595 00	July	8		P26	b	1501 30 / 651 30
	16		C27	d	725 68		21	595 00	P29	c	1 52 60 / 595 00
	25		C30	e	159 38	Aug	10		P31	d	1 57 00 / 74 38
Sept	15		C4	f	3 63 66 / 153 00		11		P31		651 30
Nov	15		C23		3 78 5 66 / 750 00		21		P36		159 38
	13		C23		750 00	Sept	7		P2		3 63 66 / 153 00
	24		C25		764 340	Nov	9	Sp Bot 7500 lbs	P22		3 78 5 66 / 1368 75
	30		C26		372 241		13	12420 "	P23		2266 —
Dec	8		C30		1 25 9 78		16	9030 "	P25		1647 18
	15		C33		2 468 88		17	11760 "	P25	c	2146 20
	22		C34		3385 20		20	13200 "	P25	c	2507 55
	27		C35		1557 75		22	10590	P26		1932 68
	28		C35		1 88 8 15		25	15270 1790 26	P27	5	2786 78
	31		J31		15 364 —	Dec	27	Cat Dp 10802 "	P30	7	6805 26
	6		C29		4200 00		30	" " 11264 "	P30	7	2496 83
	31	Balance	✓		4 210 93 / 4360 98		6	Gen Dp 20100 "	P31	4	3567 75
							8	23580 "	P32	4	4185 45
							9	20180	P33	5	3567 75
							12	23460 / 189612	P33	6	4164 15
							26	20490	P36	8	3436 98
								4360 98			51465 91
					51465 91						51465 91
Jan	12		C45	A	4284 98	Jan	1	Balance	✓	A	4360 98
	19		C46	A	10849 —		5	Gen Dep 34800 lbs	P42	8	6179 00
	22		C47	A	1 25 7 30		10	Sp Buttons 15240	P44	9	2781 30
	26		C50	A	5 12 3 79		12	" " 17310	P44	10	3159 08
Feb	6		C54	A	5 12 3 79 / 6 18 3 20		13	" " 13410	P45	10	2447 33
					18 9 45 19						18 9 45 19

[fol. 2]

Account No.

NAME The Shotwell Mfg. Co.

ADDRESS

Sheet No. 1A

Rating

Credit Limit

DATE	ITEMS	FOLIO	✓	CREDITS	DATE	ITEMS	FOLIO	✓	CREDITS
1917					1917				
Feb.		1	C56	36	Jan. 19	Spice Patties	15750 lbs	P77	1673 38
		1	C61	3		"	15200	P77	1584 00
		1	C64	150000	Feb. 1/2	Am. Drops	4500 lbs	P83	1614 09
		1	C69	498 46		"	13980	P84	1478 25
		1	C70	8	8	"	13350	P85	3 00 1425 45
		1857 1/4	C70	8					2669 63
		1	C70	150000	16	Spice Patties	4010	P87	455 83
		1	C77	1	21	Spice Patties	13700	P87	1409 00
		1	C79	1		"	18000	P90	3 8 500
		1	C79	348 27		" "	14550	P90	3 5 5 38
		1	C81	15		"	14670 - 13760	P90	4 0 2 2 38
		1	C81	11	Mar.	Am. Drops	14370 lbs	P94	1455 068
		1	C85	27		"	14190 "	P94	1451 873
		1	C85	14	6	Spice Patties	14670	P95	6 5 4 78
				127	13	Am. Drops	14460	P98	1466 65
					14	Spice Patties	14490	P98	1469 55
					21	Am. Drops	14370	P99	1455 068
					22	"	14370	P99	1455 068
					Mar. 28	"	14880	P95	2 0 1 2 0
					4	Red Hp	7740	P76	1780 20
					4	Jessie Patton	14850	P76	2 710 13
					5	"	13860	P76	2 5 0 9 4 6
					5	Cardinal	5400	P76	3 0 2 5 50
					6	Cal Hp	13500	P76	5 7 5 6 25
					10	Spice Patties	14700	P78	2 9 5 4 50
					12	Am. Drops	13470	P80	2 3 9 0 93
					8	Cardinal	7200	P80	4 0 3 5 00
					8	Jessie Patton	14490	P80	2 7 3 2 03
					7	Cardinal & Cal Hp	13140	P80	4 0 4 5 16
					19	Cardinal	3000	P80	1 6 8 2 50
									1 7 1 0 4 0

[fol. 3]

GOVERNMENT EXHIBIT 6B

Sheet No. _____ Account No. _____

Terms

Rating

Credit Limit

NAME The Shatwell Mfg. Co.

ADDRESS

DATE		ITEMS	FOLIO	✓	DEBITS	DATE		ITEMS	FOLIO	✓	CREDITS
					127 398 28						21 160 37
May	2	(1)	C89		22124 13	Apr	20	Gen Drops 15900	P82		5070 07
	3	(2)	C89		2403 00		20	Card chor 30000	P82		16825 00
	4	K	C90		15346 08		21	Gen 12330 - Card 4944	P83		4961 34
	4	L	C90		360 19		24	Gen 14400 Card 1150	P84		2202 [illegible]
	4	M	C90		15 [illegible]		27	Card 9645	P84		5410 92
	9	(3)	C91		6459 75	May	4	Card - 3168 lbs 29 131.5	P89		15 [illegible]
	9	O	C91		9421 14		2	Card - 7680"	P89		4307 20
	17	N	C93		680 63		3	Card - 3314 Sp Butt - 14550	P89		4512 86
	25	(4)	C96		2455 00		3	Card 5064 Sp Butt - 15150	P89		5604 94
	25		C96		17 [illegible] 2400 00		4	Card - 2616	P89		1467 [illegible]
	29	P	C98		2848 51		9	Sp Butt 8250 lbs	P92		1505 [illegible]
	29	Q	C98		2469 [illegible]		12	Sp Butt 7050 Gen Drops 14640	P93		3885 [illegible]
					103 198 36		17	Gen Drops 14610	P94		[illegible]
							18	Sp Button 12960	P96		[illegible]
							25	Card - 22400 lbs	P98		18171 00
							31	Gen Drops - 13620" 1946	P98		103 [illegible]

50.37 cent in new ledger B

11.25 cent by D in new ledger

Government Exhibit 6B Defendants Exhibit

In the District Court of the United States, Northern District of Illinois, Eastern Division

No.

Roy E. Tuller - Official Court Reporter

CO 48 A

Columbus

Stationers and Printers Co.

1555 BROADWAY NEW YORK

COLUMBUS 5-5744

FILED Sept 143

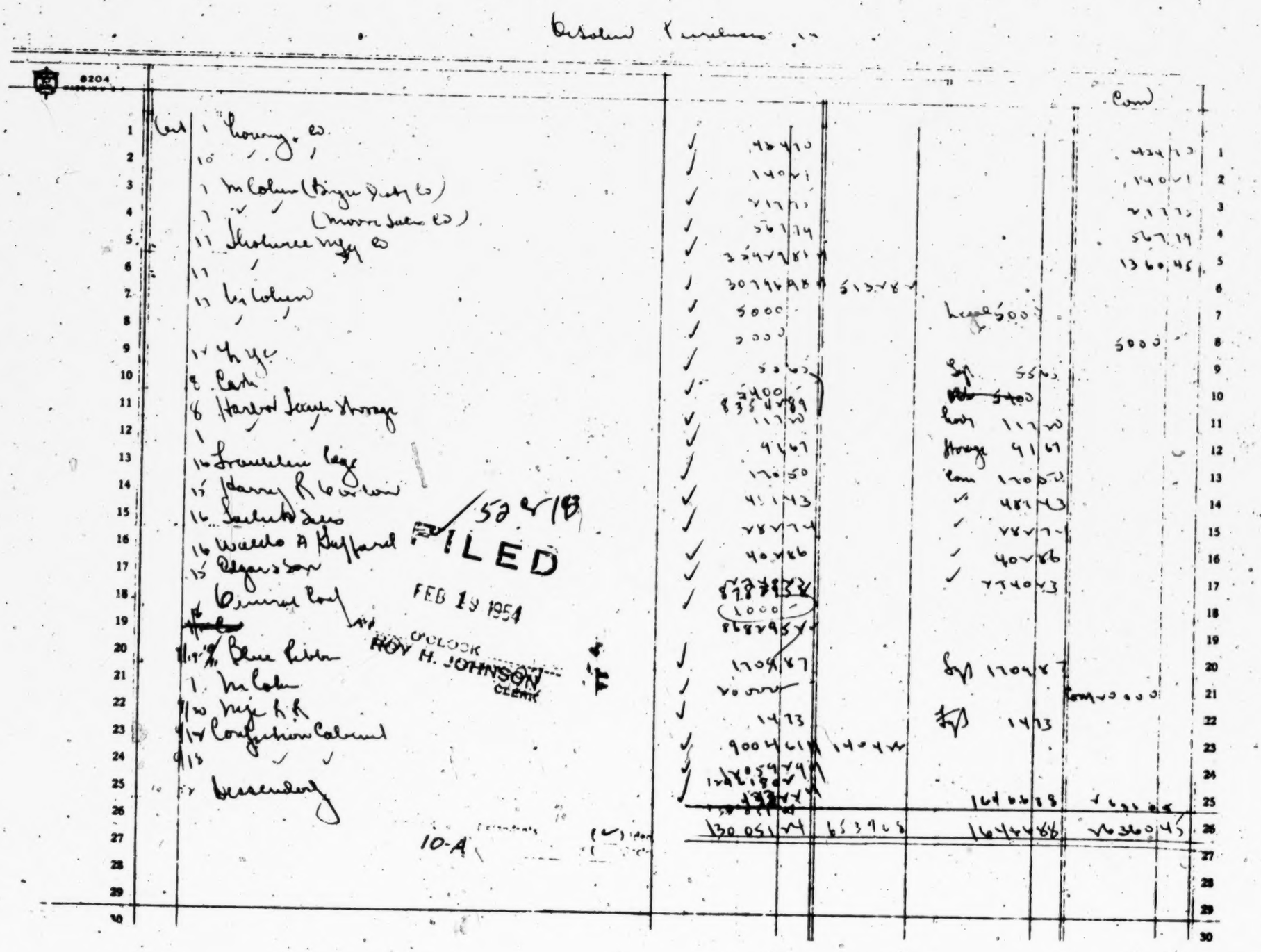
FEB 19 1954

AT O'CLOCK

ROY H. JOHNSON

[fol. 4].

GOVERNMENT EXHIBIT 10A



FILED
FEB 19 1954
HOY H. JOHNSON
CLERK

10-A

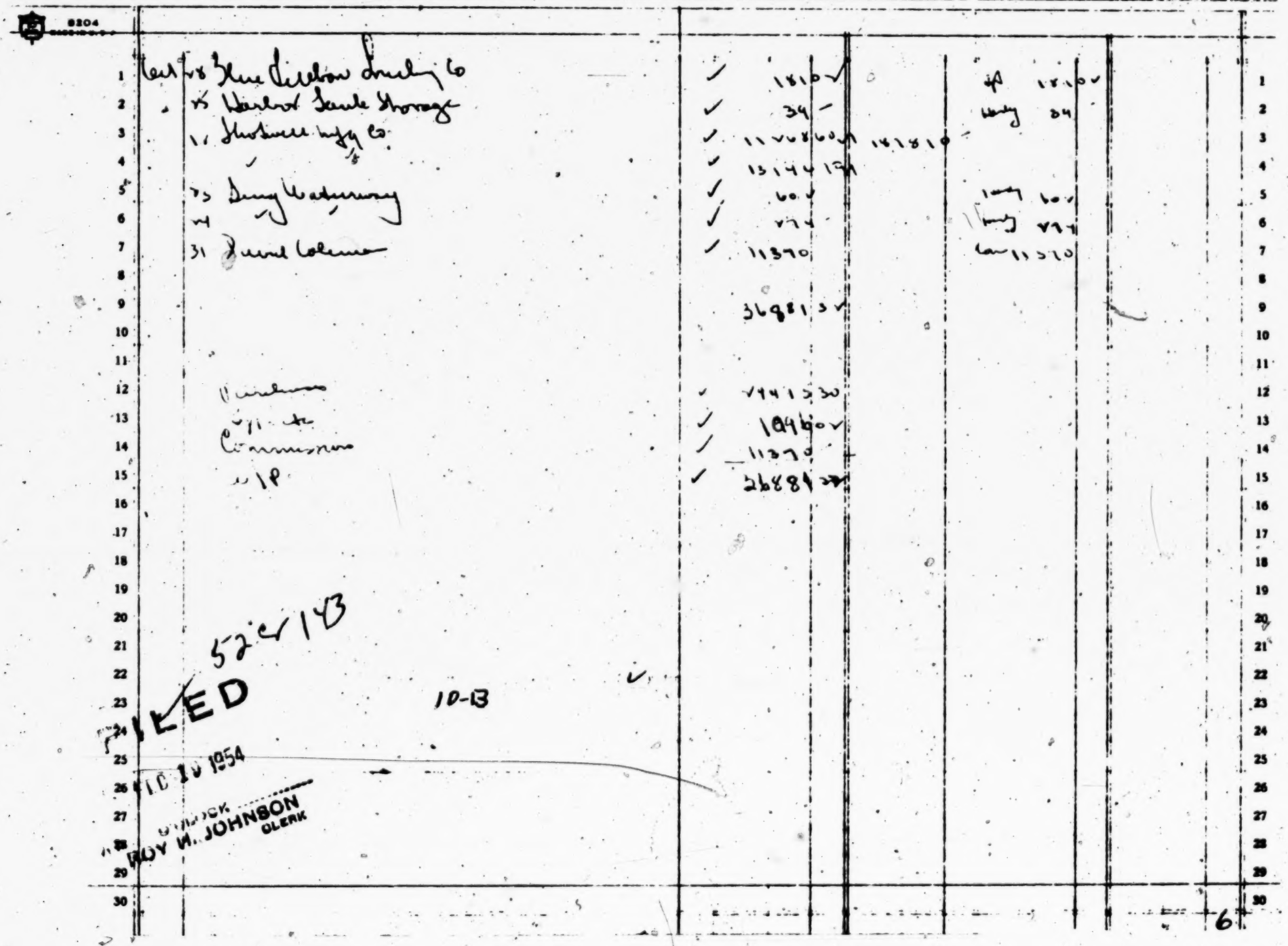
[fol. 5

Purchases	✓ 48683 11	
Legal	✓ 2600	
Commissions	✓ 39438 11	
Sg. etc	✓ 1484 11	
Accounts payable	✓	130051 44
	130051 44	130051 44

5

[fol. 6]

GOVERNMENT EXHIBIT 10B



[fol. 7]

GOVERNMENT EXHIBIT 10C

SHEET NO

ACCOUNT NO.

TERMS

RATING

CREDIT LIMIT

NAME Shotwell Mfg Co

ADDRESS

BUSINESS

VERIFIED	DATE 1946		ITEMS	FEL	✓	DEBITS	DATE 1946		ITEMS	FEL	✓	CREDITS
	Oct	17	check	CD7	A	10000	Oct	17		P8	A	35929 81
		17	✓	CD8	B	10000		✓		✓	B	30794 98
			✓	✓	B	10000	Oct	18		P10	C	11268 60
			✓	✓	B	10794 98				✓	D	13144 70
			mdt.	✓	A	25929 81						91142 09
	Nov	13	check	CD10	A	4000						
		20	✓	✓	C	5268 60						
		7	31-10	✓	D	13144 70						
						91142 09						

7

Form 165-A
THE KLEIN-HEIMBINDER CO.
Stationers-Printers-Multigraphers
140 Madison Ave. New York, N. Y.
Tel. MUrray Hill 4-6417-8

FILED 5/28/43

FEB 19 1954

AT O'CLOCK
ROY H. JOHNSON
CLERK

Government 10 C Defendants

Idea. Rec'd.

Roy Elmer - Official Court Reporter

[fol. 8]

GOVERNMENT EXHIBIT 10D

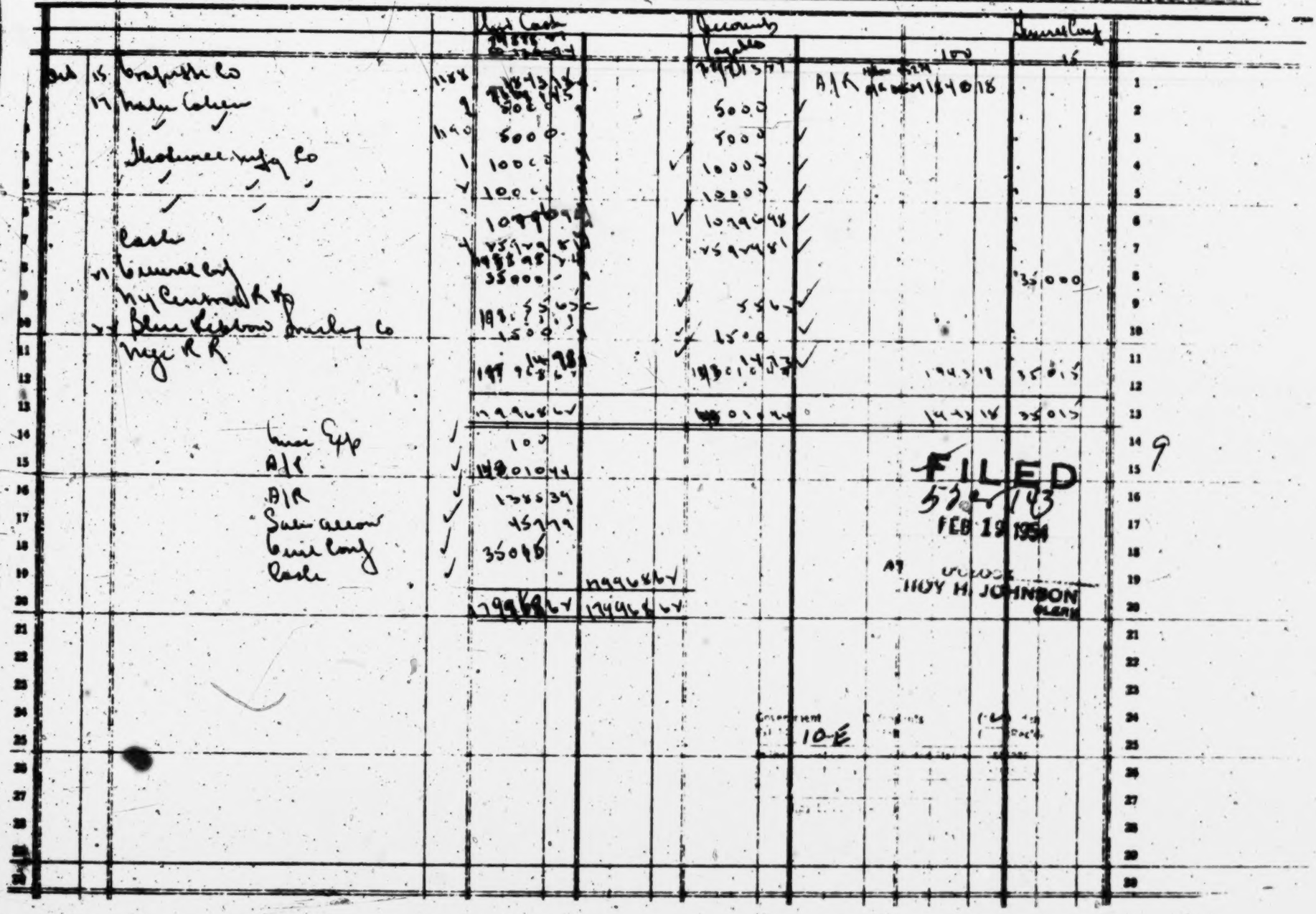
October 1940 Cash Disbursements

			Check Number	Check Amount	Personnel Payable			Journal Page
1	WS	✓ Cash	1164	5000	5000	✓		1
2		✓ Unemployment Fee	5	44 76	44 76	✓		2
3		✓ David Coleman	6	150	150	✓		3
4		Cash - D. Coleman	7	84 72	84 72	✓	Government Exhibit 10-D	4 (✓) Mon ( ) Tues
5		Lindsay Coleman	8	72 72	72 72	✓		5
6		✓ ✓	9	56 79	56 79	✓		6
7			1170	20000	20000	✓		7
8		✓ Cash	1	5400	5400	✓		8
9		Leonard Terminal Storage Co	2	21 50	21 50	✓		9
10		Pennsylvania R R Co	3	4151253	4151253	✓		10
11		Harbor Tank Storage	4	303945	303945	✓	FILED FEB 15 1941	11
12		General Refining	5	2802196	2802196	✓		12
13		Candela Press	6	7432	7432	✓		13
14		Chief Wisconsin Warehouse	7	15			WM. H. JOHNSON CLERK	14
15		Klein Manufacturing Co	8	4151259	4151259	✓		15
16		Dowdy & Wilson	9	2179	2179	✓		16
17		Pennsylvania R R	1160	3447	3447			17
18		Duchesne and Belanger	1	33 30	33 30	✓		18
19		Harry R Loveland Co	2	24455	24455	✓		19
20		Wade Salvage Co	3	14274	14274	✓		20
21		Lowry & Co	4	43470	43470	✓		21
22		✓ Louise Devereux	5	17500	6500	✓		22
23		✓ Federation of Junior Clubs		1500			Louise	1500 23
24		Joint Agreement Appeal		500		✓		500 24
25		United Union Appeal		3000		✓		3000 25
26		✓ Lowry & Co	6	14071	14071	✓		26
27		Iver Bedding Co	7	2556	2556	✓		27
28		✓ Douglas Kay	8	100		✓	Louise Dev	100 28
29		✓ Clerk Deering	9	10000	10000	✓		29
30				1155124	1155109			15 30

[fol. 9]

GOVERNMENT EXHIBIT 10E

Withdrawn Cash Disbursements



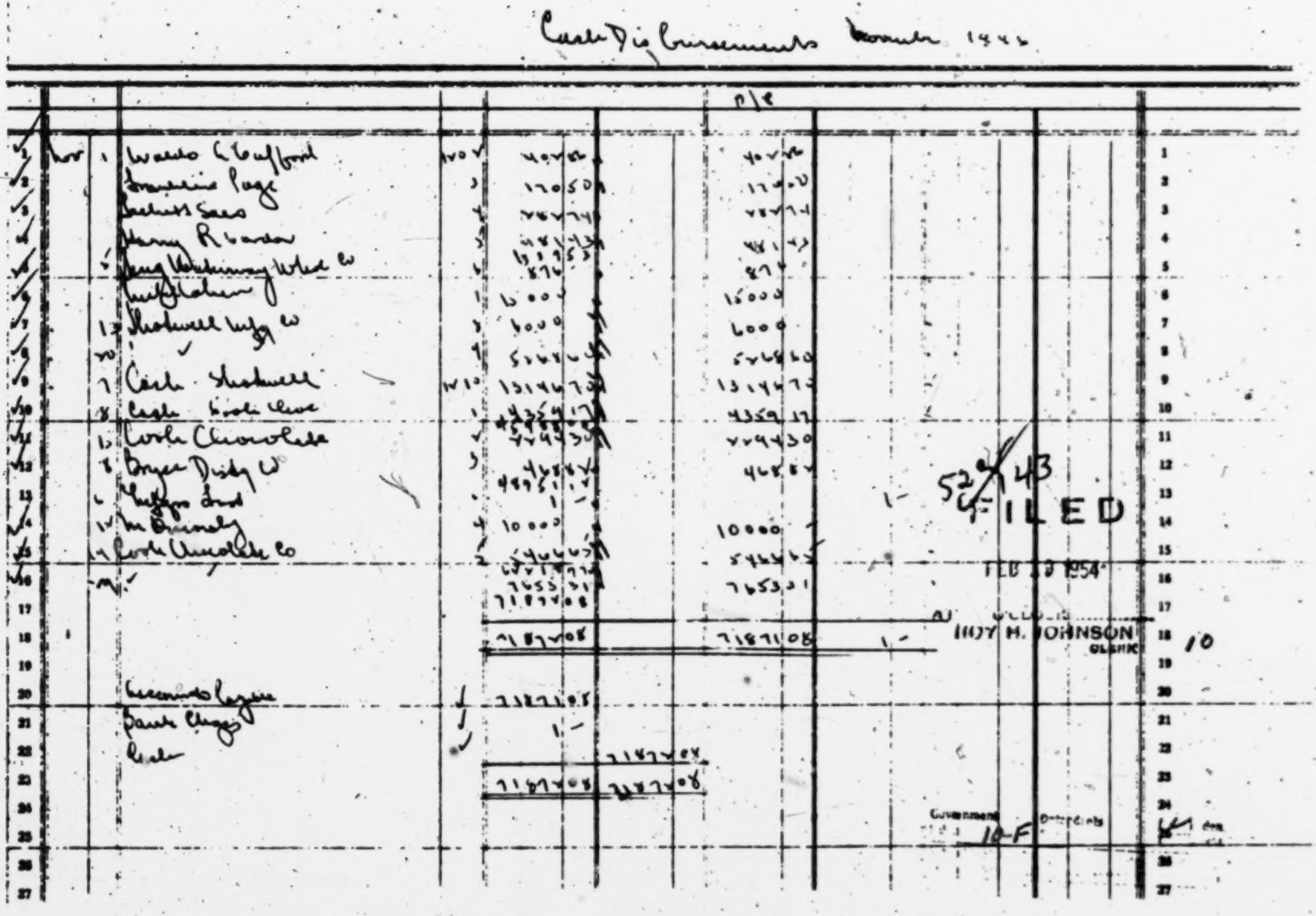
FILED
5-2-143
FEB 19 1954
HOY H. JOHNSON
CLERK

9

10-E

[fol. 10]

GOVERNMENT EXHIBIT 10F



[fol. 11]

GOVERNMENT EXHIBIT 13

Pick up $13037.25 at youngstown
They [illegible] 3037.25 —
$10000 is an advance —

#2 you will now have $13037.25 [illegible]
[illegible] $4600.00 or a total of — 4600.00
17637.25

#3 you owe Frank Huebner $8179.00
Pay him This leaves 9458.25

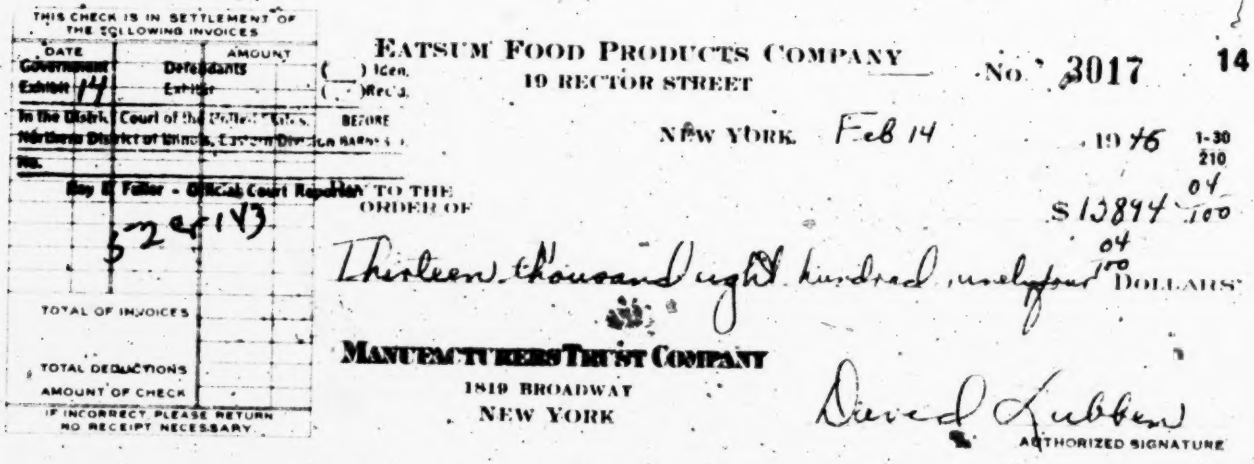
#4 Pay Ed Urban $2488.00 — April and [illegible]
advance This leaves $7050.25

#5 Letter of March 25 — To ~~[illegible]~~ Ed Urban
Pay Ed Urban $1012.20 This leaves $6038.05

#6 Now pay Frank Huebner the balance of the money and make him understand that this is a partial payment on the West Coast car of Chocolates.

[fol. 12]

GOVERNMENT EXHIBIT 14



THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES

DATE		AMOUNT
Government Exhibit 14	Defendants Exhibit	
In the District Court of the United States, Northern District of Illinois, Eastern Division		BEFORE BARNES
No.		
Roy E. Fuller - Official Court Reporter		
	52 cr 143	
TOTAL OF INVOICES		
TOTAL DEDUCTIONS		
AMOUNT OF CHECK		

IF INCORRECT, PLEASE RETURN
NO RECEIPT NECESSARY

( ) Iden.
( ) Rec'd.

EATSUM FOOD PRODUCTS COMPANY
19 RECTOR STREET

No. 3017 14

NEW YORK Feb 14 1946 1-30 210

PAY TO THE ORDER OF $13894 04/100

Thirteen thousand eight hundred ninety four 04/100 DOLLARS

MANUFACTURERS TRUST COMPANY
1819 BROADWAY
NEW YORK

David Lubben
AUTHORIZED SIGNATURE

[fol. 13]

GOVERNMENT EXHIBIT 14A

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES	
DATE	AMOUNT
14A	
TOTAL OF INVOICES	
TOTAL DEDUCTIONS	
AMOUNT OF CHECK	
IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY.	

EATSUM FOOD PRODUCTS COMPANY
10 RECTOR STREET

No. 3018 - 14

NEW YORK Feb 14 19 46

1-30
210

PAY TO THE ORDER OF $ 13844 03/100

Thirteen thousand eight hundred eighty four 03/100 DOLLARS

MANUFACTURERS TRUST COMPANY
1819 BROADWAY
NEW YORK

David Lubben
AUTHORIZED SIGNATURE

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES

DATE		AMOUNT
Exhibit 14B		
In the District Court of the United States, Northern District of Illinois, Eastern Division		BEFORE
No.		
Roy E. Fuller - Official Court Reporter		
TOTAL OF INVOICES		
TOTAL DEDUCTIONS		
AMOUNT OF CHECK		

IF INCORRECT, PLEASE RETURN
NO RECEIPT NECESSARY.

EATSUM FOOD PRODUCTS COMPANY
19 RECTOR STREET

No. 3019 · 14

NEW YORK Feb 14 1946 1-30 210

PAY TO THE ORDER OF $13894 03/100

Thirteen thousand eight hundred ninety four 03/100 DOLLARS

MANUFACTURERS TRUST COMPANY
1819 BROADWAY
NEW YORK

David Lubben
AUTHORIZED SIGNATURE

2/6/46

CARDINALS			
11/30	6312 lbs		
12/15	15768 lbs		
12/2[illegible]	17760 lbs		
1/19	25560 lbs		
	65,400 lbs @ 18 3/8 ¢	$ 12,262.50	
SPREE BUTTONS			
12/8	18090 lbs		
12/21	9090 lbs		
12/21	10200 lbs		
1/29	12600 lbs		
	49,980 lbs @ 10¢	4,998.00	
CHOC COVER NUTS (42¢)			
11/30	26,749 lbs		
12/8	52,419 lbs		
12/19	20,700 lbs		
12/20	12,351 lbs		
12/15	44022 lbs		
	156,241 lbs @ 10¢	15,624.10	
CHOC COVERED NUTS (48¢)			
12/8	4370 lbs		
1/10	24587 lbs		
1/17	29693 lbs		
	58,650 @ 15¢	8,797.50	41,682.10

Government's Exhibit 14C
In the District Court of the United States, Northern District of Illinois, Eastern Division
BEFORE
Roy E. Fuller - Official Court Reporter

[fol. 16]

3017 – Byron Cain
3018 Harold Sullivan
3019 Frank Huebner

[fol. 17]

GOVERNMENT EXHIBIT 23A

The SHOTWELL MFG. CO. Confectionery Specialties

3501 W. POTOMAC AVE. CHICAGO 51, ILLINOIS

INV. NO. C 60254

INVOICE DATE DEC 26 1944
F. O. B. CHICAGO

SOLD TO
EATSUM FOOD PRODUCTS
1841 BROADWAY
NEW YORK N Y

TERMS:
CASH. 10 DAYS NET 30.
1% ON MARSH-MALLOW
2% ON CANDY

SHIP TO
ADDRESS
CITY
ROUTE
EATSUM FOOD PRODUCTS
170TH & CROMWELL
NEW YORK CITY /BRONX/
A B C FWDG

STATE OF N Y

SHIP VIA | YOUR ORDER NO | DATE WANTED | BROKER | SOLD BY USE

CASES	DESCRIPTION		CARTONS OR WEIGHT	PRICE	EXTENSION
683	GUM DROPS	30/#EA	20490	97	XXXX8
				+10	2 587 98
				17 3/4	2049 00
					3 636 98
	Cases Candy				
683		215 5	M 2/26		

PAID
JAN 12 1945
EATSUM FOOD PRODUCTS CO.
V211
P 86
53 1/43

Government Exhibit 23A
Roy L. Fuller - Official Court Reporter

IMPORTANT—SHOTWELL'S CANDIES are guaranteed to reach you in first class condition. We do not guarantee their sale or keeping quality.
WATCH YOUR STOCK—By ordering frequently—supplying fresh merchandise to your trade at all times—you will greatly increase your sales and profits.
NO GOODS ARE TO BE RETURNED WITHOUT OUR WRITTEN AUTHORITY.

The Shotwell Mfg. Co. of Chicago, Ill., branded within the meaning of the Federal Food or is an article which may not, under the pro- Seller, hereby guarantees to the purchaser that Drug, and Cosmetic Act, passed by the Congress visions of Section 404 or 505 of the Act, be intro- no article listed herein is adulterated or mis- of the United States and approved June 25, 1938, duced into Interstate Commerce.

THE SHOTWELL MFG. CO.

Prices subject to withdrawal or change without notice. All prices and deliv- ies subject to strikes, fires, riots, acts of God, war, shortage of shipping and conditions beyond our control.

[fol. 18]

GOVERNMENT EXHIBIT 24A

The SHOTWELL MFG. CO. *Confectionery Specialties*

INV. NO. C 61544

3501 W. POTOMAC AVE. CHICAGO 51, ILLINOIS

INVOICE DATE
F. O. B. CHICAGO

SOLD TO
EATSUM FOOD PRODUCTS
1841 BROADWAY
NEW YORK NEW YORK

TERMS:
CASH. 10 DAYS
NET 30.
1% ON MARSH-MALLOW
2% ON CANDY

SHIP TO
EATSUM FOOD PRODUCTS
ADDRESS 170TH & CROMWELL
CITY NEW YORK CITY /BRONX/ STATE OF NEW YORK
ROUTE A B C FWDG

SHIP VIA | YOUR ORDER NO. | DATE WANTED | BROKER | SOLD BY SE

CASES	DESCRIPTION		CARTONS OR WEIGHT	PRICE	EXTENSION
508	SPICE BUTTONS	30 EA	15240	08½	1257 30
				4 10	
				8½	
		144			
508	Cases Candy	16002	M 1/10		

Government Exhibit 24A Date ... Exhibit ...
In the District ...
Northern District ...
No.
Roy E. Fuller - Official Court Reporter

PAID
JAN 2 1945
Chicago Food Products Co.
2408

IMPORTANT.—SHOTWELL'S CANDIES are guaranteed to reach you in first class condition. We do not guarantee their sale or keeping quality.
WATCH YOUR STOCK:—By ordering frequently—supplying fresh merchandise to your trade at all times—you will greatly increase your sales and profits.
NO GOODS ARE TO BE RETURNED WITHOUT OUR WRITTEN AUTHORITY.

The Shotwell Mfg. Co. of Chicago, Ill., branded within the meaning of the Federal Food or is an article which may not, under the pro- Seller, hereby guarantees to the purchaser that Drug, and Cosmetic Act, passed by the Congress visions of Section 404 or 505 of the Act, be intro- no article listed herein is adulterated or mis- of the United States and approved June 25, 1938, duced into Interstate Commerce.

THE SHOTWELL MFG. CO.

Prices subject to withdrawal or change without notice. All prices and deliv- les subject to strikes, fires, riots, acts of God, war, shortage of shipping and conditions beyond our control.

[fol. 19]

GOVERNMENT EXHIBIT 25

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES.

DATE		AMOUNT	
#61904		1428	08
59931		1106	33
63830		1299	38
64176		1287	00
		5120	79
Less 2%		102	42
		5018	37
TOTAL OF INVOICES			
TOTAL DEDUCTIONS			
AMOUNT OF CHECK			

IF INCORRECT, PLEASE RETURN
NO RECEIPT NECESSARY.

EATSUM FOOD PRODUCTS COMPANY
1841 BROADWAY

No. 2484 14

NEW YORK Jan 26 1945

PAY TO THE ORDER OF The Shotwell Mfg Co $ 5018 37/100

THE SUM $5018 [illegible] DOLLARS

MANUFACTURERS TRUST COMPANY
1819 BROADWAY
NEW YORK

1-30

David Lubben
AUTHORIZED SIGNATURE

MERCHANTS NATIONAL BANK
2417 in Chicago 2417
THE SHOTWELL MFG. CO.

2417

JAN 30 45 [illegible]

[illegible] TRUST CO.
NEW YORK 1-23
TRANSIT DEPT.

Government Defendants
Exhibit 25 Exhibit
Iden. Rec'd.
In the District Court of the United States, BEFORE
Northern District of Illinois, Eastern Division BARNES J.
No.
Roy E. Fuller - Official Court Reporter

[fol. 20]

GOVERNMENT EXHIBIT 25A

The SHOTWELL MFG. CO.

Confectionery Specialties

3501 W. POTOMAC AVE. CHICAGO 51, ILLINOIS

INV. NO. C 59931

INVOICE DATE JAN 13 1945

F. O. B. CHICAGO

SOLD TO: EATSUM FOOD PROD
~~XXXX~~ 1841 BROADWAY
NEW YORK N Y

TERMS: CASH. 10 DAYS NET 30. 1% ON MARSH-MALLOW 2% ON CANDY

SHIP TO ADDRESS CITY: EATSUM FOOD PROD
170TH & CROMWELL
NEW YORK CITY BRONX

STATE OF N Y

ROUTE: ABC FWDG

SHIP VIA	YOUR ORDER NO.	DATE WANTED	BROKER	SOLD BY
				HSE

CASES	DESCRIPTION		CARTONS OR WEIGHT	PRICE	EXTENSION
447	SPICE BUTTONS 53cr 143	30# EA	13410#	08¼	1106 33
				+10	1141 00
				18 4	
	Government Exhibit 25A In the District Court ... District of ... No. Roy E. Fuller - Official Court Reporter				
	Cases Candy				
447		14081	1-13S		

IMPORTANT:—SHOTWELL'S CANDIES are guaranteed to reach you in first class condition. We do not guarantee their sale or keeping quality.
WATCH YOUR STOCK:—By ordering frequently—supplying fresh merchandise to your trade at all times—you will greatly increase your sales and profits.
NO GOODS ARE TO BE RETURNED WITHOUT OUR WRITTEN AUTHORITY.

The Shotwell Mfg. Co. of Chicago, Ill., branded within the meaning of the Federal Food Seller, hereby guarantees to the purchaser, that no article listed herein is adulterated or misbranded within the meaning of the Federal Food Drug, and Cosmetic Act, passed by the Congress of the United States and approved June 25, 1938 or is an article which may not, under the provisions of Section 404 or 505 of the Act, be introduced into Interstate Commerce.

THE SHOTWELL MFG. CO.

Prices subject to withdrawal or change without notice. All prices and deliveries subject to strikes, fires, riots, acts of God, war, shortage of shipping and conditions beyond our control.

GOVERNMENT EXHIBIT 27A

SHOTWELL MFG CO

Paid Jan 14 1945
CD 46
10849

Spice Buttons

Jan 10, 1945	15,240 lbs			
12, 1945	17,310 lbs			
		32,550 lbs @ 10¢		$ 3255.00

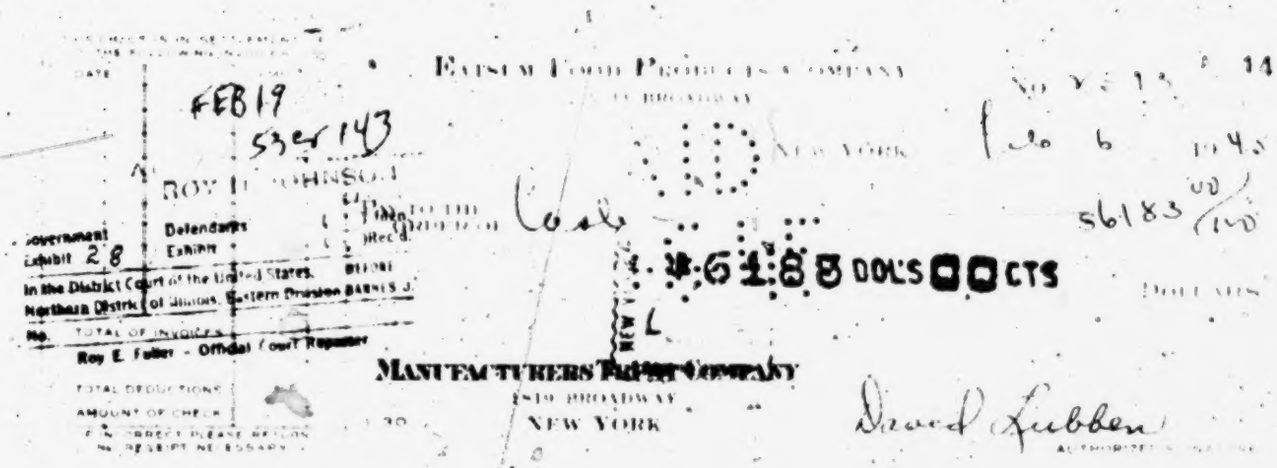
Gum Drops

Dec 6, 1944	20,100 lbs			
8, 1944	23,580 lbs			
9, 1944	20,100 lbs			
12, 1944	23,460 lbs			
26, 1944	20,490 lbs			
Jan 5, 1945	34,800 lbs			
		142,530 lbs @ 10¢	$14,253.00	
		Advanced	8,000.00	
				6253.00
				$ 9508.00

Government Exhibit 27A Defendants Exhibit ( ) Iden. (✓) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division BEFORE BARNES J.
No.
Roy E. Fuller - Official Court Reporter

1 1 1954 53 143

H. JOHNSON
CLERK



Government Exhibit 28

EATSUM FOOD PRODUCTS COMPANY
[illegible] BROADWAY
NEW YORK

No. [illegible] 14

Feb 6 1945

56183 00/100

Pay to the Order of Cash

$6188 DOLS 00 CTS

DOLLARS

MANUFACTURERS TRUST COMPANY
1819 BROADWAY
NEW YORK

David Lubben
AUTHORIZED SIGNATURE

FEB 19
53er 143

ROY [illegible] JOHNSON

Government Exhibit 28
Defendants Exhibit
In the District Court of the United States, Northern District of Illinois, Eastern Division
DEFORE BARNES J.
No. TOTAL OF INVOICES
Roy E. Fuller - Official Court Reporter
TOTAL DEDUCTIONS
AMOUNT OF CHECK
IF INCORRECT PLEASE RETURN
NO RECEIPT NECESSARY

Frieda Sidener

[fols. 25-26]

GOVERNMENT EXHIBIT 29

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES.

DATE		AMOUNT
2/8/45	68817	1039 63
2/16/45	70524	1155 83
		2190 46
Less 2%		43 91
		2146 55

Government Exhibit 29 Defendants Exhibit ( ) Idem. (✓) Rec'd.

TOTAL OF INVOICES

In the District Court of the United States, Northern District of Illinois, Eastern Division

TOTAL DEDUCTIONS

No.

AMOUNT OF CHECK

IF INCORRECT, PLEASE RETURN

NO RECEIPT NECESSARY.

EATSUM FOOD PRODUCTS COMPANY
1841 BROADWAY

No. 2844 14

NEW YORK Feb 27 1945

PAY TO THE ORDER OF [illegible] $2146 55/100

FILED

THE SUM $2146 00/100 55 CTS DOLLARS

FEB 19 1954

534143

MANUFACTURERS TRUST COMPANY
1819 BROADWAY
NEW YORK

VT. O'CLOCK
ROY H. JOHNSON
CLERK

David Lubben
AUTHORIZED SIGNATURE 25

PAY TO THE ORDER OF ANY BANK OR BANK
ALL PRIOR ENDORSEMENTS
MERCHANTS NATIONAL BANK
2-417 IN CHICAGO
MAR 2 45 [illegible]
PAY TO THE ORDER OF
FEDERAL RESERVE BANK
CHICAGO

RECEIVED PAYMENT
NEW YORK CLEARINGHOUSE
PRIOR ENDORSEMENTS GUARANTEED
MAR 3 45 102
GUARANTY TRUST CO.
1-23 OF NEW YORK 1-23
TRANSIT DEPT.

PAY TO THE ORDER OF
MERCHANTS NATIONAL BANK
2-417 in Chicago
THE SHOTWELL MFG. CO.

[fol. 27]

GOVERNMENT E[illegible] 29A

The SHOTWELL MFG. CO.

Confectionery Specialties

3501 W. POTOMAC AVE. CHICAGO 51, ILLINOIS

INV. NO. C 68817

INVOICE DATE FEB 3

F. O. B. CHICAGO

SOLD TO: EATSUM FOOD PROD
1841 BROADWAY
NEW YORK N Y

SHIP TO ADDRESS CITY ROUTE: EATSUM FOOD PROD
170TH & CROMWELL
NEW YORK /BRONX/
A B C FWDG

STATE OF NEW YORK

TERMS: CASH. 10 DAYS NET 30. 1% ON MARSH-MALLOW 2% ON CANDY

SHIP VIA	YOUR ORDER NO.	DATE WANTED	BROKER	SOLD BY
				HSE

CASES	DESCRIPTION		CARTONS OR WEIGHT	PRICE	EXTENSION
445	GUM DROPS	30#EA	13350#	07 2 +.10 17 3/4	1034 63
	Cases Candy				
445		14018	M2/8		

PAID
FEB 27 1945
EATSUM FOOD PRODUCTS CO.
PER [illegible]
53 of 143

29A

Northern District [illegible] Division [illegible]

Roy E. Fuller - Official Court Reporter

IMPORTANT:—SHOTWELL'S CANDIES are guaranteed to reach you in first class condition. We do not guarantee their sale or keeping quality.
WATCH YOUR STOCK:—By ordering frequently—supplying fresh merchandise to your trade at all times—you will greatly increase your sales and profits.
NO GOODS ARE TO BE RETURNED WITHOUT OUR WRITTEN AUTHORITY.

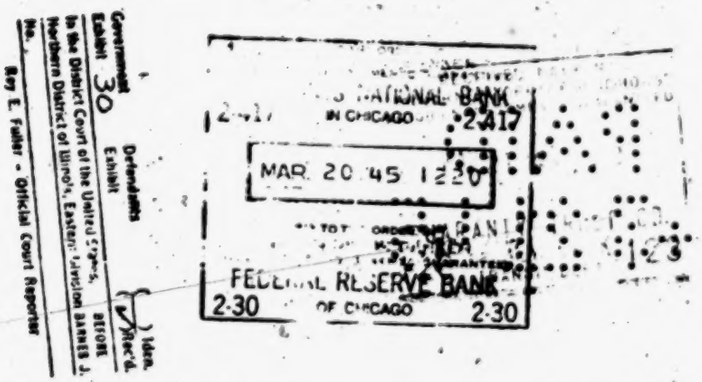
The Shotwell Mfg. Co. of Chicago, Ill., branded within the meaning of the Federal Food or is an article which may not, under the pro- Seller, hereby guarantees to the purchaser, that Drug, and Cosmetic Act, passed by the Congress visions of Section 404 or 505 of the Act, be intro- no article listed herein is adulterated or mis- of the United States and approved June 25, 1938, duced into 'Interstate Commerce.

THE SHOTWELL MFG CO.

Prices subject to withdrawal or change without notice. All prices and deliv- ies subject to strikes, fires, riots, acts of God, war, shortage of shipping and conditions beyond our control.

[fols. 28-29]

GOVERNMENT EXHIBIT 30



53-143

27

[fol. 30]

GOVERNMENT EXHIBIT 30A

The SHOTWELL MFG. CO.

Confectionery Specialties

3501 W. POTOMAC AVE. CHICAGO 51, ILLINOIS

INV. NO. C 70683

SOLD TO: EATSUM FOOD PROD
1841 BROADWAY
NEW YORK N Y

SHIP TO: EATSUM FOOD PROD
ADDRESS: 170TH & CROMWELL
CITY: NEW YORK BRONX
STATE OF: N Y
ROUTE: ABC FWDG

INVOICE DATE
F. O. B. CHICAGO FEB 23

TERMS:
CASH. 10 DAYS
NET 30.
1% ON MARSH-
MALLOW
2% ON CANDY

SHIP VIA	YOUR ORDER NO.	DATE WANTED	BROKER	SOLD BY
				HSE

	CASES	DESCRIPTION		CARTONS OR WEIGHT	PRICE	EXTENSION
	485	SPICE BUTTONS PAID	30# EA	14550#	08½	1200 38
					10	145500
					18¼	1655.38
Government Exhibit 30 A	Defendant's Exhibit	( ) Iden. (✓) Rec'd. MAR 1 1945				
In the District Court of the United States, Northern District of Illinois, Eastern Division		BEFORE				
No.						
Ray E. Fuller - Official Court Reporter						
		Cases Candy				
	485		15278	2-23		

IMPORTANT—SHOTWELL'S CANDIES are guaranteed to reach you in first class condition. We do not guarantee their sale or keeping quality.
REORDER YOUR STOCK—By ordering frequently,—supplying fresh merchandise to your trade at all times—you will greatly increase your sales and profits.
NO GOODS ARE TO BE RETURNED WITHOUT OUR WRITTEN AUTHORITY.

The Shotwell Mfg. Co. of Chicago, Ill. Seller, hereby guarantees to the purchaser, that no article listed hereto is adulterated or mis-
branded within the meaning of the Federal Food Drug and Cosmetic Act, passed by the Congress of the United States and approved June 25, 1938,
or to an article which may not, under the provisions of Section 404 or 505 of the Act, be introduced into Interstate Commerce.
THE SHOTWELL MFG. CO.

Prices subject to withdrawal or change without notice. All prices and deliveries subject to strikes, fires, riots, acts of God, war, shortage of shipping and conditions beyond our control.

[fols. 31-31a]

GOVERNMENT EXHIBIT 31

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES

DATE		AMOUNT
11 14 41		1099 73
11 17 41		1113 68
1 31 42		3681 48
12 4 41		1123 00
1 4 42		1232 03
		8057 89
		165 04
TOTAL OF INVOICES		8086 80
TOTAL DEDUCTIONS		
AMOUNT OF CHECK		

IF INCORRECT PLEASE RETURN
NO RECEIPT NECESSARY

EA[illegible]UM FOOD PRODUCTS COMPANY
1841 BROADWAY
NEW YORK

No 3102 14

March 20 19[illegible]

PAID

PAY TO THE ORDER OF [illegible] $8086/100

[illegible] 6 DOLS 8 [illegible]TS DOLLARS

MANUFACTURERS TRUST COMPANY
1819 BROADWAY
NEW YORK

1-30

Beatrice Feldman
AUTHORIZED SIGNATURE

PAY TO THE ORDER OF
GUARANTY TRUST CO
NEW YORK, N. Y.
FOR COLLECTION
[illegible]
[illegible] NATIONAL BANK
2-417 CHICAGO 2-417
R. A. SCHERER, Cashier

Government Exhibit 31
Defendants Exhibit
( ) Iden. ( ) Rec'd.
In the District Court of the United States
Northern District of Illinois, Eastern Division
No.
Roy E. Feller - Official Court Reporter

2-417
[illegible] 45 1130
[illegible] GUARANTEED
[illegible] BANK
2-30

GOVERNMENT EXHIBIT

The SHOTWELL MFG. CO.

Confectionery Specialties

3501 W. POTOMAC AVE. CHICAGO 51, ILLINOIS

INV. NO. C 715

FEB 23 1945

SOLD TO: EATSUM FOOD PROD
1841 BROADWAY
NEW YORK N Y

INVOICE DATE
F. O. B. CHICAGO

TERMS:
CASH. 10 DAYS
NET 30.
1% ON MARSHMALLOW
2% ON CANDY

SHIP TO ADDRESS: EATSUM FOOD PROD
CITY: 170TH & CROMWELL
ROUTE: NEW YORK BRONX STATE OF N Y

ABC FWDG

SHIP VIA	YOUR ORDER NO.	DATE WANTED	BROKER	SOLD BY
				HSE

	CASES	DESCRIPTION		CARTONS OR WEIGHT	PRICE	EXTENSION
	473	GUM DROPS	30# EA	14190#	07¾	1099.73
					10	141900
					17¾	2518.73
		Cases Candy				
	473		XS 14900	2-28		

P A I D

MAR 20 1945

Government Exhibit 31A — Defendant's Exhibit — ( ) Iden ( ) Rec'd.
In the District Court of the United States, Northern District of Illinois, Western Division
No.
Roy E. Fuller -- Official Court Reporter

◆ IMPORTANT:—SHOTWELL'S CANDIES are guaranteed to reach you in first class condition. We do not guarantee their sale or keeping quality. WATCH YOUR STOCK.—By ordering frequently, supplying fresh merchandise to your trade at all times—you will greatly increase your sales and profits. NO GOODS ARE TO BE RETURNED WITHOUT OUR WRITTEN AUTHORITY.

The Shotwell Mfg. Co. of Chicago, Ill. Seller, hereby guarantees to the purchaser, that no article listed herein is adulterated or mis-branded within the meaning of the Federal Food Drug, and Cosmetic Act, passed by the Congress of the United States and approved June 25, 1938, or is an article which may not, under the provisions of Section 404 or 505 of the Act, be introduced into Interstate Commerce.

THE SHOTWELL MFG. CO.

Prices subject to withdrawal or change without notice. All prices and deliveries subject to strikes, fires, riots, acts of God, war, shortage of shipping and conditions beyond our control.

[fols. 43-44]

GOVERNMENT EXHIBIT 37

Government Exhibit 37

EATSUM FOOD PRODUCTS COMPANY
1841 BROADWAY

No. 3596 14

NEW YORK April 18 1945

PAY TO THE ORDER OF [illegible] $2674 00/100

THE SUM $2672 DOLS 00 CTS DOLLARS

FILED
FEB 19 1954
324143
[illegible] H. JOHNSON
CLERK

N.F. 2-417

1810 BROADWAY
NEW YORK

1-30

David Lubben
AUTHORIZED SIGNATURE

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES.

DATE		AMOUNT
[illegible]		27 [illegible]
[illegible]		[illegible]
		2674 00

TOTAL OF INVOICES
Roy E. Fuller - Official Court Reporter
TOTAL DEDUCTIONS
AMOUNT OF CHECK
IF INCORRECT PLEASE RETURN
NO RECEIPT NECESSARY.

PAY TO THE ORDER OF
MERCHANTS NATIONAL BANK
2-417 in Chicago 2-417
THE SHOTWELL MFG. CO

2 PAY TO THE ORDER OF
ANY BANK OR BANKER
ALL PRIOR ENDORSEMENTS TO GUARANTY
MERCHANTS NATIONAL BANK
2-417 IN CHICAGO 2-417

CANCELLED

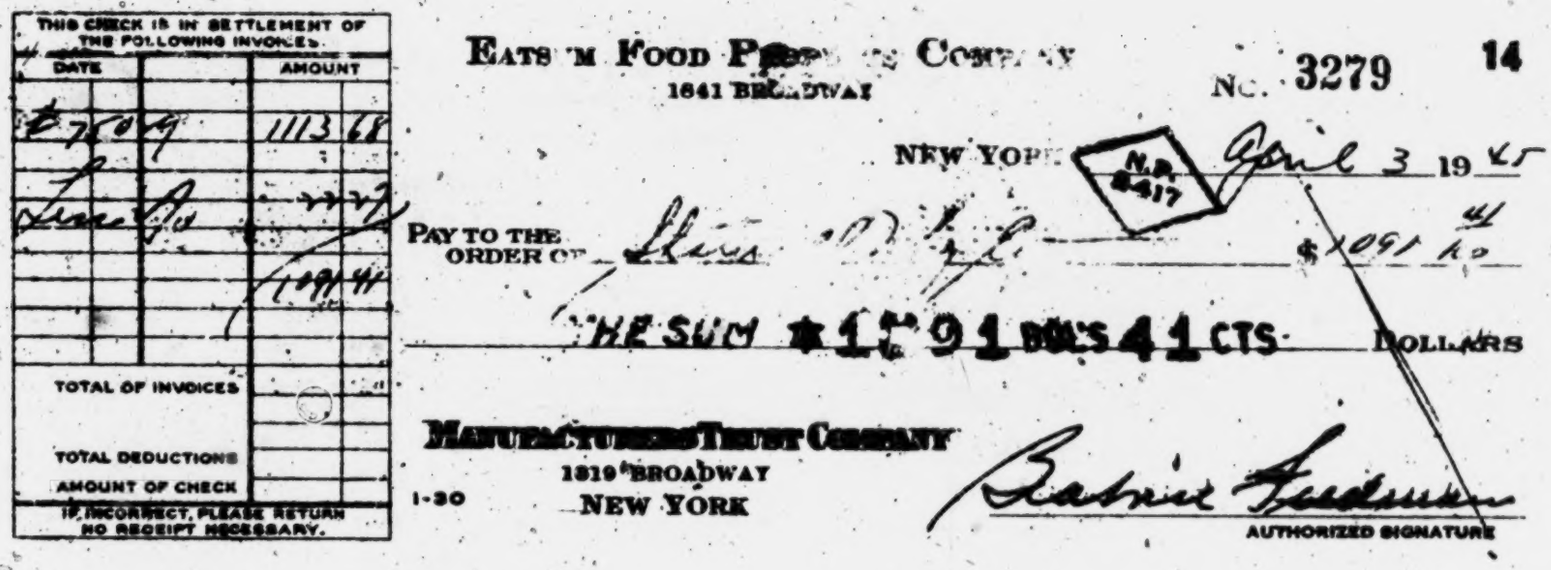
PAY TO THE ORDER OF
[illegible] RESERVE BANK
[illegible] OF CHICAGO 2-30

GUARANTY TRUST CO.
1-23 OF NEW YORK 1-23
TRANSIT DEPT.

PAY TO THE ORDER OF
GUARANTY TRUST CO.
NEW YORK, N.Y.
FOR COLLECTION
MAY 3 1945
MERCHANTS NATIONAL BANK
2-417 IN CHICAGO 2-417

[fols. 33-34]

GOVERNMENT EXHIBIT 32



THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES.

DATE		AMOUNT	
750	9	1113	68
Less		22	27
		1091	41
TOTAL OF INVOICES			
TOTAL DEDUCTIONS			
AMOUNT OF CHECK			

IF INCORRECT, PLEASE RETURN NO RECEIPT NECESSARY.

EATS'M FOOD PRODUCTS COMPANY
1841 BROADWAY

No. 3279 14

NEW YORK N.P. 8417 April 3 1945

PAY TO THE ORDER OF [illegible] $1091 41/100

THE SUM $1091 DOLS 41 CTS DOLLARS

MANUFACTURERS TRUST COMPANY
1819 BROADWAY
NEW YORK

1-30

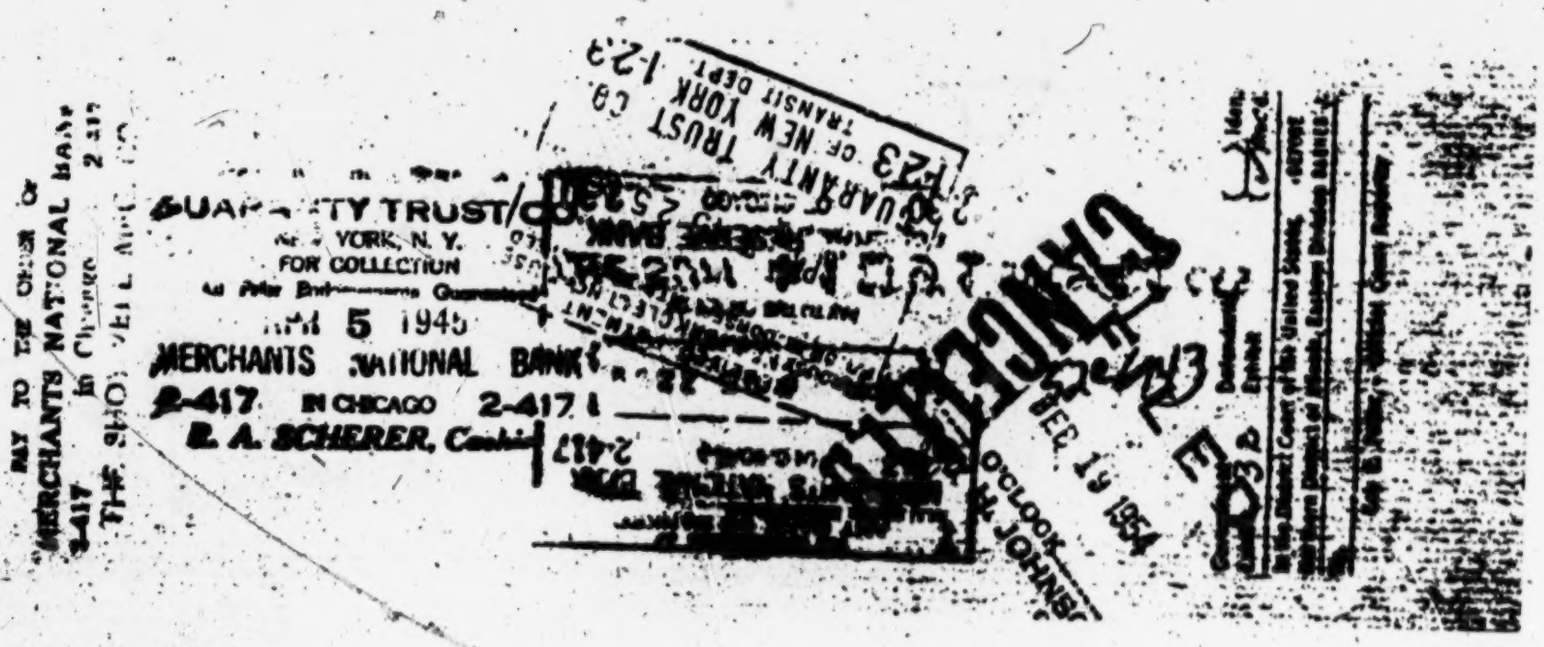
[illegible]
AUTHORIZED SIGNATURE

PAY TO THE ORDER OF MERCHANTS NATIONAL BANK 2-417 in Chicago 2-417 THE SHOW VELL AND CO.

GUARANTY TRUST CO.
NEW YORK, N. Y.
FOR COLLECTION
All Prior Endorsements Guaranteed
APR 5 1945
MERCHANTS NATIONAL BANK
2-417 IN CHICAGO 2-417
R. A. SCHERER, Cashier

GUARANTY TRUST CO. OF NEW YORK 1-23 TRANSIT DEPT.

CANCELLED
DEC 19 1954
O'CLOCK
H. JOHNSON



[fol. 35]

GOVERNMENT EXHIBIT 33A

Government Exhibit 33A

The SHOTWELL MFG. CO. Confectionery Specialties

INV. NO. C 76054

3501 W. POTOMAC AVE. CHICAGO 51, ILLINOIS

INVOICE DATE
F. O. B. CHICAGO

SOLD TO
EATSUM FOOD PROD
1841 BROADWAY
NEW YORK N Y

TERMS:
CASH. 10 DAYS
NET 30,
1% ON MARSH-MALLOW
2% ON CANDY

SHIP TO
ADDRESS
CITY
EATSUM FOOD PROD
170TH & CROMWELL
NEW YORK CITY /BRONX

STATE OF

ROUTE
A B C

SHIP VIA | YOUR ORDER NO. | DATE WANTED | SOLD BY HSE

CASES	DESCRIPTION		CARTONS OR WEIGHT	PRICE	EXTENSION
496	GUM DROPS	30#EA	14880	07¾	1153 20
				10 / 17¾	148800 / 2641.20
52 & 143					
	This going to factory				
496		15624	M 3/28		

Government Exhibit 33A
Defendants Exhibit
( ) Iden.
(✓) Rec'd.
In the District Court of the United States, Eastern District of Illinois, Eastern Division
BEFORE BARNES J.
Cases Candy
No.
Roy E. Fuller - Official Court Reporter

IMPORTANT:—SHOTWELL'S CANDIES are guaranteed to reach you in first class condition. We do not guarantee their sale or keeping quality.
WATCH YOUR STOCK.—By ordering frequently—supplying fresh merchandise to your trade at all times—you will greatly increase your sales and profits.
NO GOODS ARE TO BE RETURNED WITHOUT OUR WRITTEN AUTHORITY.

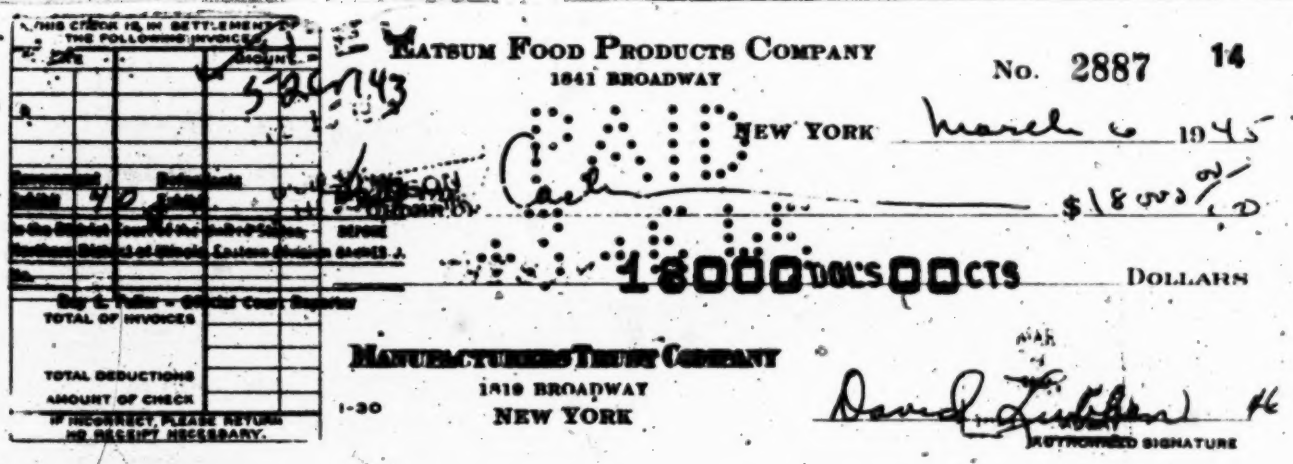
The Shotwell Mfg. Co. of Chicago, Ill., Seller, hereby guarantees to the purchaser that no article listed herein is adulterated or misbranded within the meaning of the Federal Food Drug, and Cosmetic Act, passed by the Congress of the United States and approved June 25, 1938, or is an article which may not, under the provisions of Section 404 or 505 of the Act, be introduced into Interstate Commerce.

THE SHOTWELL MFG. CO.

Prices subject to withdrawal or change without notice. All prices and deliveries subject to strikes, fires, riots, acts of God, war, shortage of shipping and conditions beyond our control.

35

GOVERNMENT EXHIBIT 40



THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES

DATE		AMOUNT
		5 26 43

Government Exhibit 40 Defendants Exhibit

In the District Court of the United States, Northern District of Illinois, Eastern Division

Day & Fuller - Official Court Reporter

TOTAL OF INVOICES

TOTAL DEDUCTIONS

AMOUNT OF CHECK

IF INCORRECT, PLEASE RETURN. NO RECEIPT NECESSARY.

EATSUM FOOD PRODUCTS COMPANY
1841 BROADWAY

No. 2887 14

NEW YORK March 6 1945

PAID

Cash $18000 00/100

18000 DOLS 00 CTS DOLLARS

MANUFACTURERS TRUST COMPANY
1819 BROADWAY
NEW YORK

1-30

David Lubben 46
AUTHORIZED SIGNATURE

Frieda Sidener

39

[fol. 36]

GOVERNMENT EXHIBIT 34A

The SHOTWELL MFG. CO. Confectionery Specialties

INV. NO. C 75244

3501 W. POTOMAC AVE. CHICAGO 51, ILLINOIS

INVOICE DATE
F. O. B. CHICAGO

SOLD TO
EATSUM FOOD PROD
1841 BROADWAY
NEW YORK N Y

TERMS:
CASH. 10 DAYS
NET 30.
1% ON MARSH-MALLOW
2% ON CANDY

SHIP TO
ADDRESS
CITY
ROUTE
EATSUM FOOD PROD
170TH & CROMWELL
NEW YORK CITY (BRONX)
ABC FWDG

STATE OF N Y

189743

SHIP VIA	YOUR ORDER NO.	DATE WANTED	BROKER	SOLD BY
				HSE

CASES	DESCRIPTION		CARTONS OR WEIGHT	PRICE	EXTENSION
479	GUM DROPS	30# EA	14370#	07¾	1113 68
	Cases Candy				
479		15089	3-23S		

Government Exhibit 34 A
Defendants Exhibit
( ) Iden.
(✓) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division
No
Roy E. Fuller, Official Court Reporter

PAID
APR 1 1945
[illegible]
[illegible] 556

IMPORTANT:—SHOTWELL'S CANDIES are guaranteed to reach you in first class condition. We do not guarantee their sale or keeping quality.
WATCH YOUR STOCK:—By ordering frequently—supplying fresh merchandise to your trade at all times—you will greatly increase your sales and profits.
NO GOODS ARE TO BE RETURNED WITHOUT OUR WRITTEN AUTHORITY.

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THE SHOTWELL MFG. CO.

Prices subject to withdrawal or change without notice. All prices and deliveries subject to strikes, fires, riots, acts of God, war, shortage of shipping and conditions beyond our control.

[fols. 37-38]

GOVERNMENT EXHIBIT 35

Government Exhibit 35

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES

DATE		AMOUNT

Government Exhibit 35 Defendants Exhibit ( ) Iden. ( ) Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division

Roy E. Fuller - Official Court Reporter

TOTAL OF INVOICES

TOTAL DEDUCTIONS

AMOUNT OF CHECK

IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

52 or 143

1-30

EATSUM FOOD PRODUCTS COMPANY
1841 BROADWAY
NEW YORK

No 3438 14

April 7 1945

TO THE ORDER OF Shotwell Mfg Co

$14930 24/100

DOLLARS

DOL'S 2 CTS

MANUFACTURERS TRUST COMPANY
1819 BROADWAY
NEW YORK

Beatrice Feldman
AUTHORIZED SIGNATURE

PAY TO THE ORDER OF ANY BANK OR BANKER ALL PRIOR ENDORSEMENTS GUARANTEED
MERCHANTS NATIONAL BANK
2-417 CHICAGO 2-417
APR 21 45 1180
PAY TO THE ORDER OF ANY BANK OR BANKER PRIOR ENDORSEMENTS GUARANTEED
FEDERAL RESERVE BANK
2-30 OF CHICAGO 2-30

CANCELLED

MERCHANTS NATIONAL BANK
2-417 CHICAGO 2-417
THE SHOTWELL MFG. CO.

[fol. 39]

GOVERNMENT EXHIBIT 35A

The SHOTWELL MFG. CO.

Confectionery Specialties

3501 W. POTOMAC AVE. CHICAGO 51, ILLINOIS

INV. NO. C 77136

INVOICE DATE
F. O. B. CHICAGO

SOLD TO: EATSUM FOOD PRODUCTS
1841 BROADWAY
NEW YORK N Y.

TERMS:
CASH. 10 DAYS NET 30.
1% ON MARSH-MALLOW
2% ON CANDY

SHIP TO: EATSUM FOOD PRODUCTS
ADDRESS: 170TH & CROMWELL
CITY: NEW YORK BRONX
STATE OF NEW YORK
ROUTE: ABC FWDG

SHIP VIA	YOUR ORDER NO.	DATE WANTED	BROKER	SOLD BY
				HSE

CASES	DESCRIPTION		CARTONS OR WEIGHT	PRICE	EXTENSION
258	CIT DROPS	30#EA	7740	13	1006 20
				10	77400
					1780.20
	Cases Candy				
258		8127	M 4/4		

Government Exhibit 35A — Defendants Exhibit ( ) Iden. (✓) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division — BEFORE BARNES J.
No.
Roy E. Fuller - Official Court Reporter

IMPORTANT—SHOTWELL'S CANDIES are guaranteed to reach you in first class condition. We do not guarantee their sale or keeping quality.
WATCH YOUR STOCK—By ordering frequently, supplying fresh merchandise to your trade at all times—you will greatly increase your sales and profits.
NO GOODS ARE TO BE RETURNED WITHOUT OUR WRITTEN AUTHORITY.

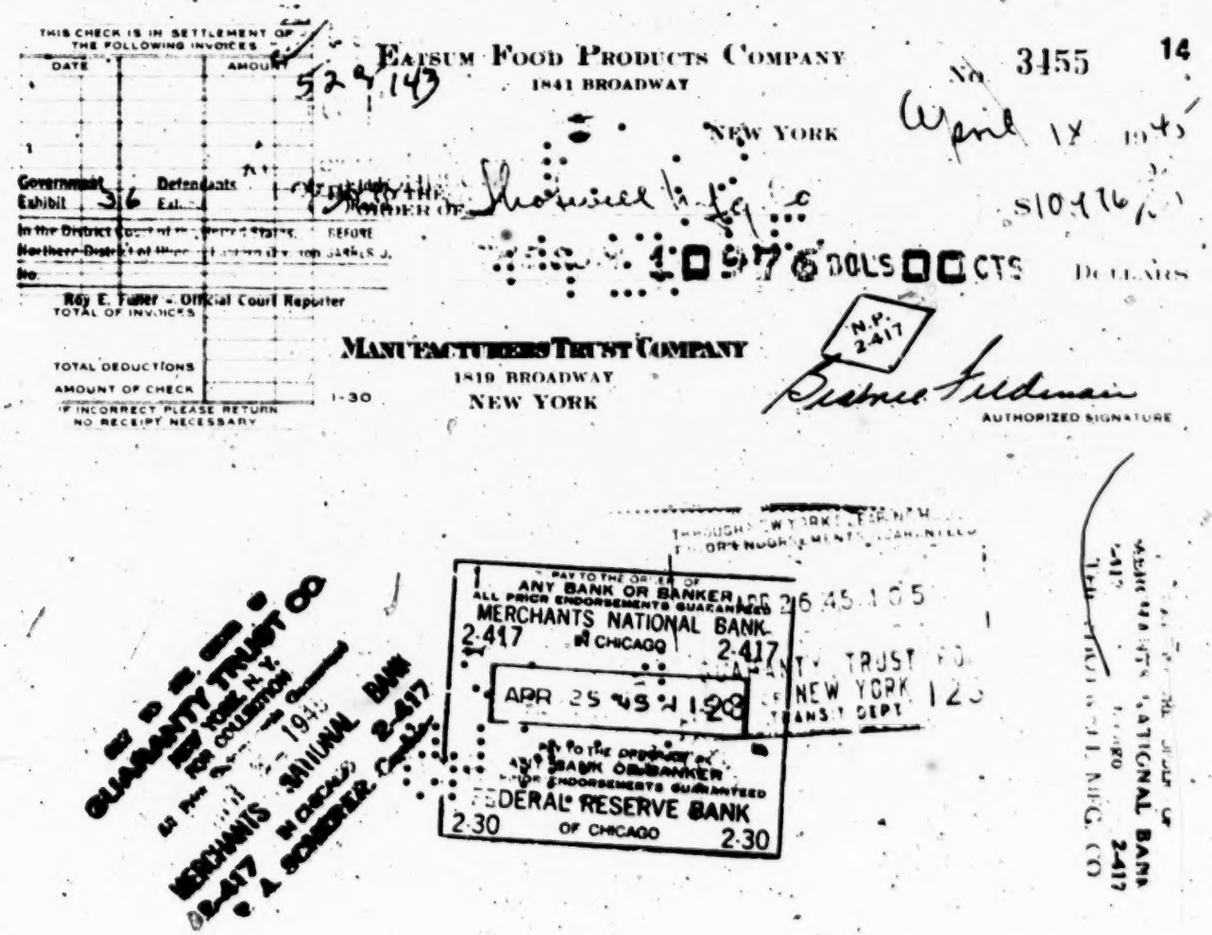
The Shotwell Mfg. Co. of Chicago, Ill., Seller hereby guarantees to the purchaser, that no article listed herein is adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, passed by the Congress of the United States and approved June 25, 1938, or is an article which may not, under the provisions of Section 404 or 505 of the Act, be introduced into Interstate Commerce.

THE SHOTWELL MFG. CO.

Prices subject to withdrawal or change without notice. All prices are delivered subject to strikes, fires, riots, acts of God, war, shortage of shipping and conditions beyond our control.

[fols. 40-41]

GOVERNMENT EXHIBIT 36



THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES

DATE		AMOUNT

Government Exhibit 36 Defendants Exhibit

In the District Court of the United States, Northern District of Illinois, Eastern Division

REFORE BARNES J.

No.

Roy E. Fuller - Official Court Reporter

TOTAL OF INVOICES

TOTAL DEDUCTIONS

AMOUNT OF CHECK

IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

529.143

EATSUM FOOD PRODUCTS COMPANY
1841 BROADWAY
NEW YORK

No. 3455 14

April 18 1945

PAY TO THE ORDER OF Shotwell Mfg Co

$10976/00

10976 DOLS 00 CTS DOLLARS

MANUFACTURERS TRUST COMPANY
1819 BROADWAY
NEW YORK

N.P. 2417

Bernice Feldman
AUTHORIZED SIGNATURE

1-30

PAY TO THE ORDER OF ANY BANK OR BANKER
ALL PRIOR ENDORSEMENTS GUARANTEED
MERCHANTS NATIONAL BANK
2-417 IN CHICAGO 2-417

APR 26 45 1 05

GUARANTY TRUST CO
NEW YORK 123
TRANSIT DEPT

APR 25 45 1 28

PAY TO THE ORDER OF ANY BANK OR BANKER
PRIOR ENDORSEMENTS GUARANTEED
FEDERAL RESERVE BANK
2-30 OF CHICAGO 2-30

PAY TO THE ORDER OF GUARANTY TRUST CO
NEW YORK, N.Y.
FOR COLLECTION
ALL PRIOR ENDORSEMENTS GUARANTEED
APR 2 1945
MERCHANTS NATIONAL BANK
2-417 IN CHICAGO 2-417
W. A. SCHERER, Cashier

THROUGH NEW YORK CLEARING HOUSE
PRIOR ENDORSEMENTS GUARANTEED

PAY TO THE ORDER OF
MERCHANTS NATIONAL BANK
2-417 CHICAGO 2-417
THE SHOTWELL MFG. CO

[fol. 42]

GOVERNMENT EXHIBIT 36A

The SHOTWELL MFG. CO. Confectionery Specialties

3501 W. POTOMAC AVE. CHICAGO 51, ILLINOIS

INV. NO. C 79451

APR 14 '45

INVOICE DATE

F. O. B. CHICAGO

SOLD TO
EATSUM FOOD PROD CO
1841 BROADWAY
NEW YORK N Y

TERMS:
CASH 10 DAYS
NET 30
1% ON MARSH-MALLOW
2% ON CANDY

SHIP TO
ADDRESS
CITY
ROUTE

WM BARRON % BEKINS
VAN & STORAGE CO-2147 SAN PABLO AVE
OAKLAND CALIF
CMSTP&P KC AT&SF

SHIP VIA	YOUR ORDER NO.	DATE WANTED	BROKER	SOLD BY

CASES	DESCRIPTION		CARTONS OR WEIGHT	PRICE	EXTENSION
1250	CARDINAL CHOC	24-1#	30000	37 1-3	11200 00
					3240
					168 45 00

Government Exhibit 36 A
Defendant's Exhibit
( ) Iden.
(✓) Rec'd.
In the District Court of the United States
Northern District of Illinois
BEFORE
CARNES J.
No.
Roy E. Fuller - Official Court Reporter

Cases Candy

1250		38750	4-14$		

IMPORTANT:—SHOTWELL'S CANDIES are guaranteed to reach you in first class condition. We do not guarantee their sale or keeping quality.
WATCH YOUR STOCK:—By ordering frequently—supplying fresh merchandise to your trade at all times—you will greatly increase your sales and profits.
NO GOODS ARE TO BE RETURNED WITHOUT OUR WRITTEN AUTHORITY.

The Shotwell Mfg. Co. of Chicago, Ill., branded within the meaning of the Federal Food or is an article which may not, under the pro- Seller, hereby guarantees to the purchaser that Drug, and Cosmetic Act, passed by the Congress visions of Section 404 or 505 of the Act, be introduced into Interstate Commerce.

no article listed herein is adulterated or misbranded within the meaning of the United States and approved June 25, 1938.

THE SHOTWELL MFG. CO.

Prices subject to withdrawal or change without notice. All prices and deliveries subject to strikes, fires, riots, acts of God, war, shortage of shipping and conditions beyond our control

[fol. 45]

GOVERNMENT EXHIBIT 37A

Government Exhibit 37A — Defendants Exhibit

In the District Court of the United States, Northern District of Illinois, Eastern Division

No.

Roy E. Fuller - Official Court Reporter

The SHOTWELL MFG. CO.

2500 W. POTOMAC AVE. CHICAGO 51, ILLINOIS

INV. NO. C 80602

INVOICE DATE APR 20 1945

F. O. B. CHICAGO

SOLD TO
EATSUM FOOD PROD
1841 BROADWAY
NEW YORK N Y

SHIP TO
EATSUM FOOD PROD
ADDRESS 170TH & CROMWELL
CITY NEW YORK CITY BRONX
STATE OF N Y
ROUTE ABC FWDG 191369

TERMS: CASH, 10 DAYS NET 30. 1% ON MARSHMALLOW 2% ON CANDY

CASES	DESCRIPTION		PRICE	EXTENSION
530	GUM DROPS	80#	15900	1232 25
167	CARDINAL CHOC	24-1#	37 1-3	1496 32
				2728 57
	Cases Candy			
530	CS CDY	16695	4-206	
167	CHOC	5177		

PAID APR 28 1945

Excellent Folio Paid 15 Gal. 35 4/6

GOVERNMENT EXHIBIT 40A

Eatsum FOOD PRODUCTS CO.
Executive Offices
1841 BROADWAY, NEW YORK 23, N. Y.

PAY TO: Cash - Shadwell

DATE 3/6/45

FOR

Government Exhibit 40A Defendants Exhibit ( ) Idea. ( ) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division BEFORE BARNES J. No.
Ray E. Fuller - Official Court Reporter

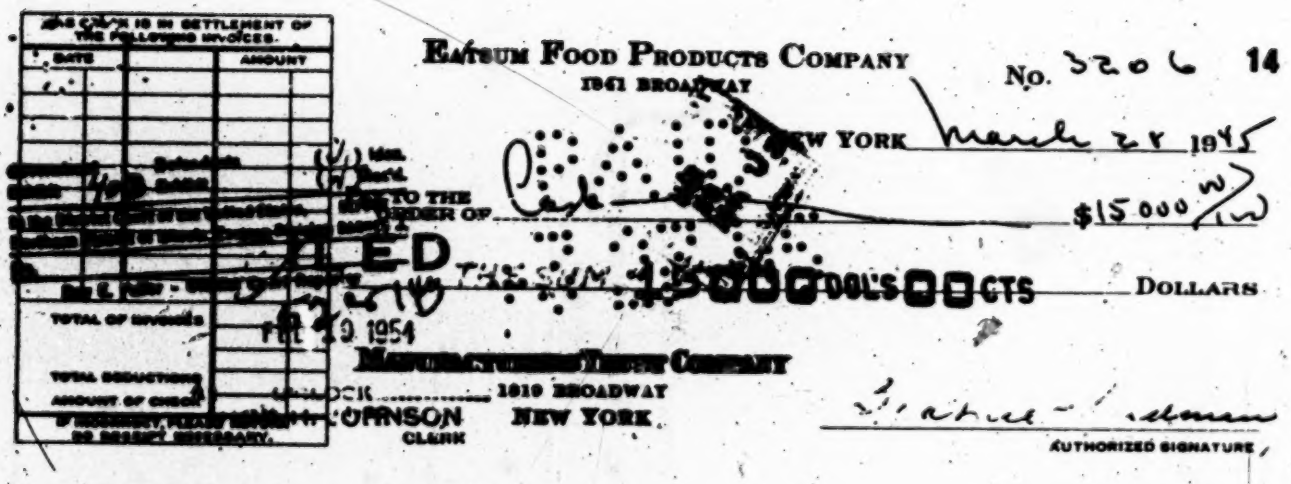
18 000

DATE PAID: 3/6/45
CHECK NO. 48 7

AUTHORIZED BY: David Lubben

[fols. 49-50]

GOVERNMENT EXHIBIT 40B



AS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES.

DATE		AMOUNT	

TOTAL OF INVOICES

TOTAL DEDUCTIONS

AMOUNT OF CHECK

IF INCORRECT, PLEASE RETURN NO RECEIPT NECESSARY.

EATSUM FOOD PRODUCTS COMPANY
1941 BROADWAY

No. 3206 14

NEW YORK March 28 1945

PAY TO THE ORDER OF Cash $15000 00/100

THE SUM 15000 DOLS 00 CTS DOLLARS

FILED
FEB 19 1954
CLERK

MANUFACTURERS TRUST COMPANY
1819 BROADWAY
NEW YORK

Frederick Fridman
AUTHORIZED SIGNATURE

Freda Fridman

GOVERNMENT EXHIBIT 40C

√Government Exhibit 40C

Eatsum FOOD PRODUCTS CO.

Executive Offices

1841 BROADWAY, NEW YORK 23, N. Y.

DATE 3/28/45

PAY TO: Cash - Shotwell

FOR

Government Exhibit 40C — Defendants Exhibit — (✓) Iden. (✓) Rec'd.

In the District Court of the United States. BEFORE Northern District of Illinois Eastern Division BARNES J.

No.

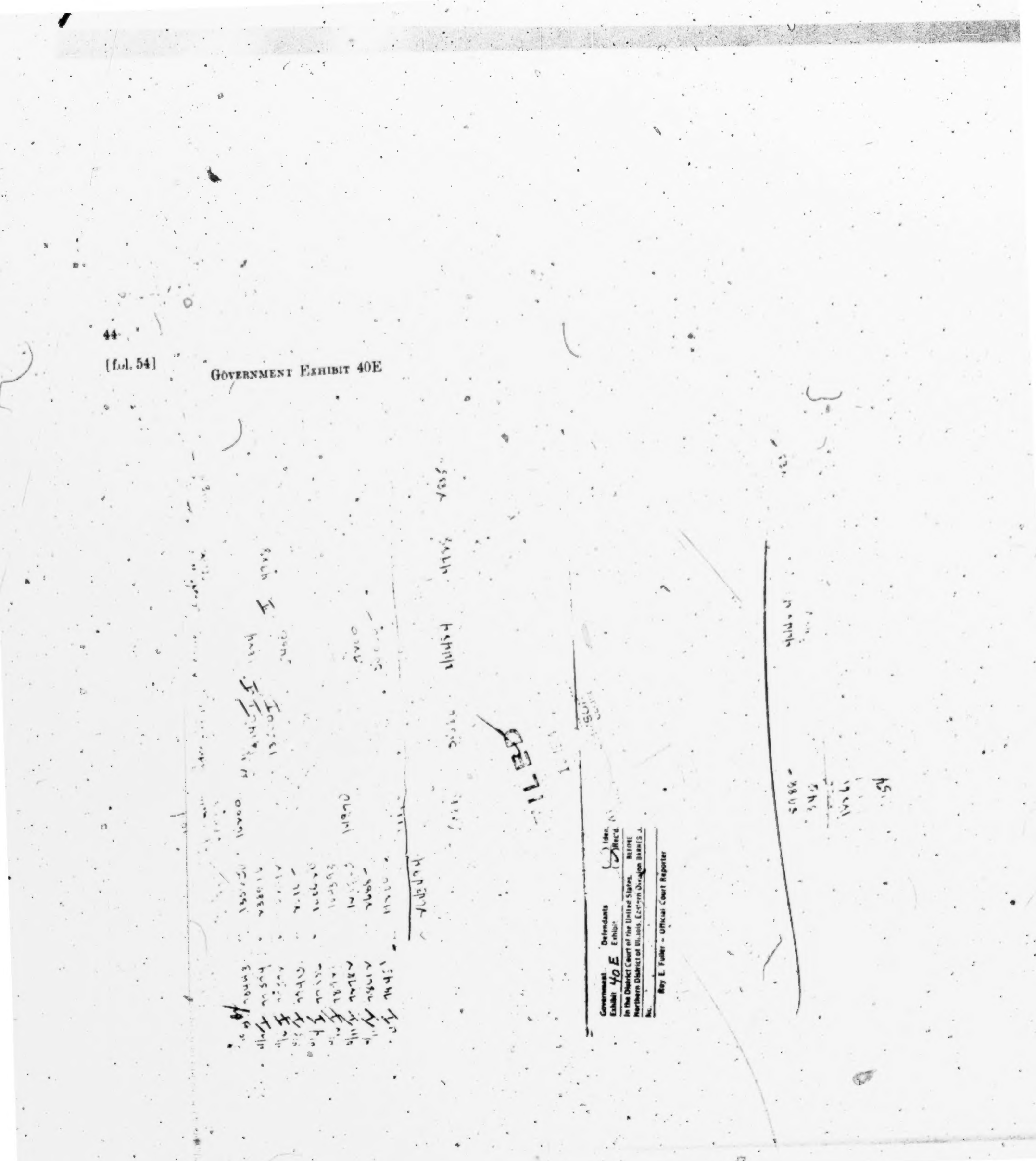
Roy E. Fuller - Official Court Reporter

DATE PAID: 3/28/45

CHECK NO. 43206

AUTHORIZED BY: David Lubben

[fol. 54] GOVERNMENT EXHIBIT 40E



Government Exhibit 40E Defendants Exhibit ( ) Iden. ( ) Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division BARNES J. BEFORE

No.

Roy E. Fuller - Official Court Reporter

GOVERNMENT EXHIBIT 43

45

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES

DATE		AMOUNT
Government Exhibit 43	Defendants Exhibit	( ) Iden. (✓) Rec'd.
In the District Court of the United States Northern District of Illinois, East Division		
No.		
Ray E. Fuller - Official Court Reporter		
TOTAL OF INVOICES		
TOTAL DEDUCTIONS		
AMOUNT OF CHECK		

IF INCORRECT, PLEASE RETURN
NO RECEIPT NECESSARY.

EATSUM FOOD PRODUCTS COMPANY
1841 BROADWAY

No. 3665 14

NEW YORK May 3 1945

PAY TO THE ORDER OF $2403.00

2403 DOLS 00 CTS DOLLARS

MANUFACTURERS TRUST COMPANY
1819 BROADWAY
NEW YORK

1-30

David Lubben
AUTHORIZED SIGNATURE

Freda Sidener 56

[fols. 52-53]

GOVERNMENT EXHIBIT 40D

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES

DATE		AMOUNT
Government Exhibit 40D	Defendants Exhibit	
In the District Court of the United States Northern District of Illinois Eastern Division		
No.		
Roy E. Fuller - Ch. Jr. Court Reporter		
TOTAL OF INVOICES		
TOTAL DEDUCTIONS		
AMOUNT OF CHECK		

IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY.

EATSUM FOOD PRODUCTS COMPANY
1841 BROADWAY
NEW YORK

No. 3661 14

May 3 1945

PAY TO THE ORDER OF Carter

THE SUM 22124 DOLS 13 CTS DOLLARS

52 or 143

MANUFACTURERS TRUST COMPANY
1819 BROADWAY
NEW YORK

1-30

Beatrice Friedman
AUTHORIZED SIGNATURE

Freda Sidener

CHECKS

Potomac Food Products, Co.
100 Broadway,
New York, N. Y.

DEPOSITS
CC Collections

Potomac Food Products

IN ACCOUNT WITH

MANUFACTURERS TRUST COMPANY

NEW YORK

Subject to Terms on Reverse Side

DATE	CHECKS	DATE	DEPOSITS	DELAYED DATE CREDITS	DATE	BALANCE
	BALANCE BROUGHT FORWARD					
15'65	9885 1 10000	15'65	2481624	2481415	15'65	143807.
16'65	20614 3101412	3311662				
16'65	26880				16'65	131119
17'65	68047 245884	1290911	334582	330217	17'65	214039.
19'65	94268 458424	454042	600350	600217	19'65	271378.
20'65	16131 18793	1278090	463561	460215	20'65	
20'65	5493 24538	132955	433425	430215	20'65	
20'65	6630 407800	7436720	600000	600000	20'65	177991
21'65	25000 5000	38600	241245	241026	21'65	
21'65	4850 79000	401866				
21'65	24617 250800	112700				
21'65	2272 3850000	1447555				
21'65	207130 1893932	457332			21'65	114846
23 EX	1000000	3437500				
23 EX	1022220 600554	8221200				
23'65	93535				23'65	1900641
23'65	58540				23'65	2102581
24'65	3037840 5000000	535	1775597	9100014	24'65	2173581
24'65	151540 3037722	1152000				
24'65	39790 1257725				24'65	2173581
26'65	3915 425	99154				
26'65	1707 5000000	1000000			26'65	
26'65	3114297 6331				26'65	1790649
27'65	1635900	300000	1151774	1110220	27'65	
27'65	3148335 4647200	60555				
27'65	547199 1317886	3406371			27'65	1403000
	1760854					1402395
28'65	3089928 7302229	1510000	468630	460215	28'65	
28'65	3445 10000000	10000000			28'65	1190144
29'65	2346 78557	27600	3734006	3700215	29'65	
29'65	3792 66330	5000				
29'65	615390 7200000	3712400			29'65	1113112
30 EX	3760708 4520066	1508400			30 EX	1101286
30 EX	9216000 1617655				30 EX	1101286
					30'65	3091116			30'65	1101191

BALANCE

PLEASE EXAMINE STATEMENT OF ACCOUNT AND VOUCHERS AT ONCE

IF NO ERRORS WITHIN TEN DAYS STATEMENT OF ACCOUNT WILL BE CONSIDERED CORRECT

OVER

This is a true and certified copy.

J. J. ELLIOTT ASSISTANT
MANUFACTURERS TRUST COMPANY
150 BROADWAY, N. Y. C.

Government Exhibit 63	Defendants Exhibit	Identified

In the District Court of the United States
Northern District of Illinois, Eastern Division
No.

Roy E. Fuller - Official Court Reporter

[fol. 67]

THIS IS A
PHOTOCOPY
MAR 31 1953

GOVERNMENT EXHIBIT 63A

CHOC NUT MEATS — 42						
10/27	120655	27347				
11/10	123399	67482				
11/17	124206	32637				
11/24	125386	24610	152,076 lbs	10¢	$ 15,207.60	
CHOC COVERED NUT MEATS — 48						
9/29	114184	8119				
10/27	120655	17848				
11/17	124206	7774				
11/24	125386	19274	53,015 lbs	15¢	7,952.25	
CARDINALS		30000				
10/12	117892	36000				
10/20	119874	59856				
11/2	112518	30000				
11/12	123402	40536	196,392 lbs	18 3/4¢	36,823.50	
11/17	124206					
SPRICE BUTTONS						
10/27/11	120655	32010				
11/10	123399	9960				
11/24	125386	19680	61,650 lbs	10¢	6,165.00	
						66,148.35
			less advance			30,000.00
			Balance Due			36,148.35

JOHNSON CLERK

Government Exhibit 63A Defendants Exhibit ( ) Iden. ( ) Rec'd.

In the District Court of the United States BEFORE Northern District of Illinois, Eastern Division BARNES

No.

Roy E. Fuller - Official Court Reporter

[fols. 57-58]

GOVERNMENT EXHIBIT 45.

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES

DATE		AMOUNT
Government Exhibit 45	Defendants Exhibit	( ) Iden. ( ) Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division

Roy E. Fuller - Official Court Reporter

52 & 143

TOTAL OF INVOICES

TOTAL DEDUCTIONS

AMOUNT OF CHECK

IF INCORRECT, PLEASE RETURN NO RECEIPT NECESSARY

EATSUM FOOD PRODUCTS COMPANY
1841 BROADWAY

No. 3752 14

NEW YORK May 9 1945

PAY TO THE ORDER OF Cash $6459 75/100

$6459 DOLS 75 CTS DOLLARS

MANUFACTURERS TRUST COMPANY
1819 BROADWAY
NEW YORK

1-30

Beatrice Feldman
AUTHORIZED SIGNATURE

Frieda Sidener

[fols. 59-60]

GOVERNMENT EXHIBIT 48

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES

DATE		AMOUNT
Government Exhibit 48	Defendants Exhibit	( ) Iden. ( ) Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division

Roy E. Fuller - Official Court Reporter

52 & 143

TOTAL OF INVOICES

TOTAL DEDUCTIONS

AMOUNT OF CHECK

IF INCORRECT, PLEASE RETURN NO RECEIPT NECESSARY.

EATSUM FOOD PRODUCTS COMPANY
1841 BROADWAY

No. 3936 14

NEW YORK May 25 1945

PAY TO THE ORDER OF Cash $4455 00/100

THE SUM $4455 DOLS 00 CTS DOLLARS

MANUFACTURERS TRUST COMPANY
1819 BROADWAY
NEW YORK

1-30

Beatrice Feldman
AUTHORIZED SIGNATURE

Frieda Sidener

[fols. 61-62]

GOVERNMENT EXHIBIT 55

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES

DATE		AMOUNT

Government Exhibit 55 Defendants Exhibit ( ) Iden. ( ) Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division

No.

Roy E. Fuller - Official Court Reporter

TOTAL OF INVOICES

TOTAL DEDUCTIONS

AMOUNT OF CHECK

INCORRECT, PLEASE RETURN NO RECEIPT NECESSARY.

EATSUM FOOD PRODUCTS COMPANY
1841 BROADWAY
NEW YORK

No. 3937 14

52 cr (14)

May 1st 1945

PAY TO THE ORDER OF Cash $20000.00

THE SUM 20000 DOL'S 00 CTS DOLLARS

MANUFACTURERS TRUST COMPANY
1819 BROADWAY
NEW YORK

1-30

Beatrice Friedman
AUTHORIZED SIGNATURE

Frieda Sidens

GOVERNMENT EXHIBIT 55A

Cardinals
5/25 32,400 lb boxes
6/6 27,792 lb boxes
60,192 lb boxes @ 18 3/4 $11,286.00

Spice Buttons
5/24 12,960 lbs
6/6 15,180 lbs
6/22 42,310 lbs
70,950 lbs @ 10¢ $ 7095.00

Gum Drops
5/31 13,620 lbs
5/23 14,520 lbs
28,140 lbs @ 10¢ 2814.00

Special Citrus Drops
5/23 29,160 lbs @ 10¢ 2916.00

Government Exhibit 55A Defendants Exhibit ( ) Iden. ( ) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division BARNES J.
Official Court Reporter

$24,111.00
advanced 20,000.00
Balance due 4,111.00

6/28 Spice buttons 14,130 @ 10¢ 1,41[illegible].00
Balance due 5,5[illegible].00

$1000.00 4524.00

[fol. 64]

GOVERNMENT EXHIBIT 55B

Cardinals	32400lb boxes @ 18 3/4 ¢	6075.00
Spice Buttons	12960 lbs @ 10¢	1296.00
Gum drops	13620 lbs @ 10¢	1362.00
		8733.00
	advanced	20000.00
		11267.00

Government Exhibit 55B — Defendants Exhibit — ( ) Iden. ( ) Rec'd.

In the District Court of the United States — BEFORE

Northern District of Illinois, Eastern Division — HARNEY J.

No.

Roy E. Fuller - Official Court Reporter

[fols. 73-74]

GOVERNMENT EXHIBIT 92

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES

DATE		AMOUNT
Government Exhibit 92	Defendants Exhibit	

In the District Court of the United States, Northern District of Illinois, Eastern Division

No.

Roy E. Fuller - Official Court Reporter

52 V 143

TOTAL OF INVOICES

TOTAL DEDUCTIONS

AMOUNT OF CHECK

IF INCORRECT PLEASE RETURN
NO RECEIPT NECESSARY

GENERAL CONFECTIONS, INC.
40 WEST 170TH STREET

No. 396 14
~~585~~

BRONX, N. Y. 4-29- 1946 1 30/210

PAY TO THE ORDER OF Cash $ 2300 00/XX

THE SUM OF ~~$~~ 2300 00/100 CTS

DOLLARS

MANUFACTURERS TRUST COMPANY
1819 BROADWAY
NEW YORK

David Lubben PRES.
TREAS.

PAY TO THE ORDER OF ANY
BANK, BANKER OR TRUST CO.
OR THROUGH THE
NEW YORK CLEARING HOUSE
ENDORSEMENTS GUARANTEED
MAY 20 1946
THE NATIONAL CITY BANK
OF NEW YORK 1-8

HO
TR

Wm. Hartmann

GOVERNMENT EXHIBIT 55C

5-2C 143

Government Defendant ( ) Ident.
Exhibit 55C Exhibit (✓) Rec'd.

In the District Court of the United States, BEFORE
Northern District of Illinois, Eastern Division BARNES J.

No.

Roy E. Fuller - Official Court Reporter

The Shotwell Mfg. Co.

Cardinal	1450 Co	10 13 45	6 [illegible]
	1500 Co	10 20 45	McDonald
	[illegible]	1 3 45	[illegible]
	1450 Co	[illegible]	[illegible]
Total	[illegible] Co	55806	

Choc Cut Neat XXXXX 776 Co x 3 lb [illegible] 10/[illegible]/45

Choc Cut Neat 1184 Co x 3 lb 10/[illegible]/45
2934 Co x 3 lb [illegible]

Total 4143 Co [illegible] lbs

Dice Buttons 1067 Co 30 lb 10/[illegible]/45
332 Co 30 lb [illegible]/45

Total 1399 = 41970 lbs

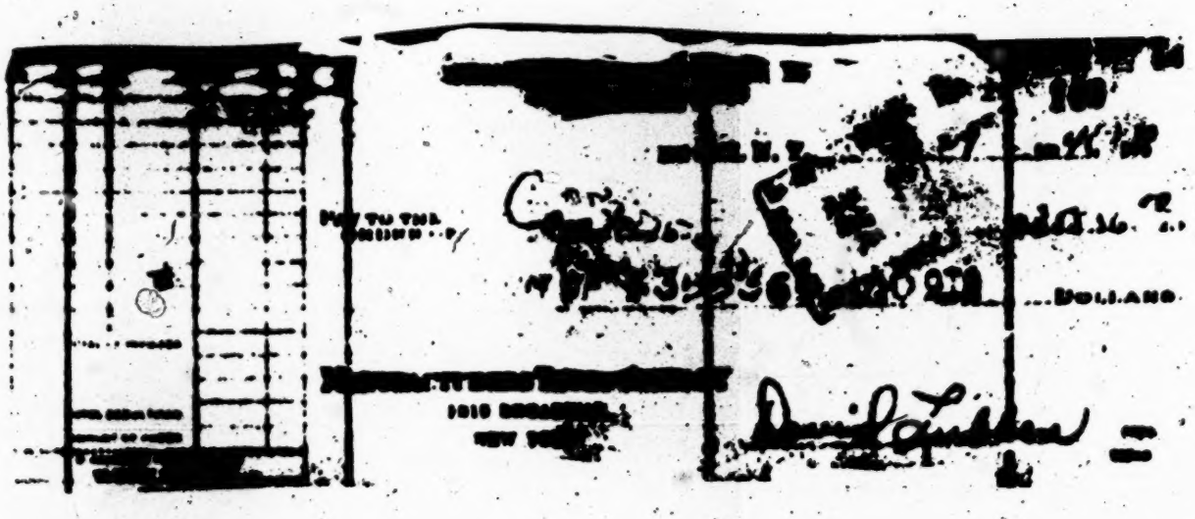
Government Exhibit 63B Defendants Exhibit ( ) Iden. ( ) Rec'd.
In the District Court of the [illegible] BEFORE
Northern District of [illegible]
No.
[illegible]

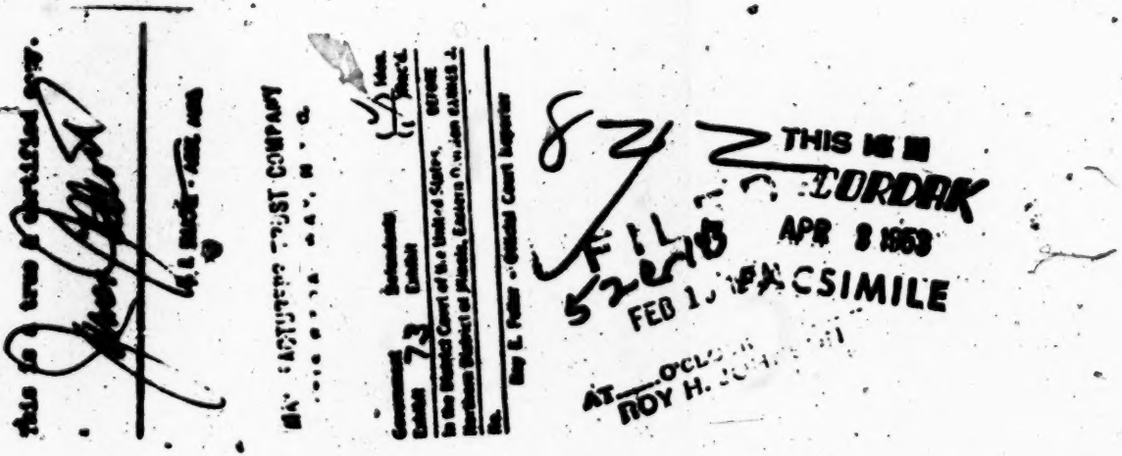
Miss [illegible]
Thise were Hu[illegible]
[illegible]

Government Exhibit 63B Defendants Exhibit ( ) Iden. ( ) Rec'd.
In the District Court of the [illegible]
Northern District of [illegible]
No.
Roy E. Fuller — [illegible]

[fols. 70-71]

GOVERNMENT EXHIBIT 73





3/[illegible]/46

CARDINALS

11/30	6,312 lbs
12/15	15,768
12/26	17,760
1/19	25,560

65,400 @ 18 3/4 $ 12,2[illegible]2.50

SPICE BUTTONS

12/8	18,090 lbs
12/21	9,090
12/21	10,200
1/29	12,600

49,980 @ 10¢ 4,998.00

CHOC COVERED NUTS (42¢)

11/30	26,749 lbs
12/8	52,419
12/19	20,700
12/20	12,351
12/25	44,022
2/28	13,892

170,133 @ 10¢ 17,013.30

CHOC COVERED NUTS (48¢)

12/8	4,370
1/10	[illegible],587
1/17	29,693

58,650 @ 15¢ 8,797.50

43,071.30
7535.30 ~~5795.80~~
37295.50

43,071.30
17535.30
35536.[illegible]

Hot 72

Government Exhibit 73A

57

SHOTWELL SHIPMENTS

GUM WORK

March 25	496	Gum Drops	14,880 lb.	10 lb.	$1,488.00
April 1	700	Spice Drops	21,000 lb.	10 lb.	2,100.00
April 10	283	Spice Drops	8,940 lb.	10 lb.	849.00
April 12	700	Gum Drops	21,000 lb.	10 lb.	2,100.00
April 13	329	Gum Drops	9,870 lb.	10 lb.	987.00
April 18	749	Gum Drops	22,470 lb.	10 lb.	2,247.00
April 20	663	Spice Strings	19,890 lb.	10 lb.	1,989.00
~~April 25~~	~~822~~	Gum Drops	24,660 lb.	10 lb.	2,466.00
April 25	500	Spice Strings	15,000 lb.	10 lb.	1,500.00
April 27	465	Spice Strings	13,950 lb.	10 lb.	1,395.00
April 30	739	Gum Drops	22,170 lb.	10 lb.	2,217.00
April 30	60	Spice Strings	1,800 lb.	10 lb.	180.00
					$19,518.00

CARDINALS

April 10	1,204 doz.	2.25 doz.	2,709.00
April 13	840 doz.	2.25 doz.	1,890.00
April 30	1,788 doz.	2.25 doz.	4,023.00
May 4	1,500 doz.	2.25 doz.	3,375.00
May 6	912 doz.	2.25 doz.	2,052.00
			$14,049.00

TOTAL GUM WORK	$19,518.00
TOTAL CARDINALS	14,049.00
	$33,567.00

LESS PAYMENTS

Paid to Frank on way to farm	$1,488.00
Paid to Frank in Chicago	14,000.00
Paid to Mr. Krasne for Mr. Cain	1,450.00
Paid to Frank by Hankermeyer	8,450.00
	$25,388.00

Government Defendants Iden
Exhibit 112 Exhibit Rec'd
In the District Court of the United States
Northern District of
No.
Ray E. Fuher - Official Court Reporter

$33,567.00
$25,388.00
8,179.00 Balance Pay to Frank by Heitmann

This cleans up allowances on all shipments to May 15th

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES

Government Exhibit 93 Defendants Exhibit

In the District Court of the United States, Northern District of Illinois, Eastern Division

No.

Roy E. Fuller - Official Court Reporter

GENERAL CONFECTIONS, INC.
40 WEST 170TH STREET
BRONX, N. Y.

No. 574

PAY TO THE ORDER OF

$ 23002 300 CTS

DOLLARS

MANUFACTURERS TRUST COMPANY
1819 BROADWAY
NEW YORK

David Fulben

TOTAL OF INVOICES

AT

TOTAL DEDUCTIONS

AMOUNT OF CHECK

IF INCORRECT PLEASE RETURN
INC RECEIPT NECESSARY

MAY 18 1946

THE NATIONAL CITY BANK
OF NEW YORK

PAYEE

MAY 18 1946

WH

5 18	Youngstown pair	13037.75
	They owe	3032.25
	~~two checks Cashed~~	~~4600.00~~
	Total	17637.25
	Paid Heubner	8179.00
	To Urban	9458.25
		2408.00
		7050.25
	Letter of 2/25 to Urban	1012.20
	Bill to Heubner on Car of Chr for West Coast	6038.05

June 17

In the later part of May we shipped to McDonald Candy Co of Eugene Oregon 1989 cases 1# Chocs on an invoice

We also shipped early in June to Wm Bitton Candy Co — In Oakland 70 cases on an invoice

We bought this merchandise for 100% cash as Chatwell needed the money for a corn deal to get corn syrup. It was necessary for us to draw a check to cash as we sell all goods on an invoice

check drawn for $ 27322.67

GOVERNMENT EXHIBIT 112

SHOTWELL MFG. CO.

INVOICE #	DATE	ITEM	WEIGHT	COST
C 219517	6/18/46	1000 cs Cal Jells	30,000	$ 3600.00
C 220889	6/20/46	690 cs Cal Jells	20,700	2484.00
C 220991	6/25/46	738 cs Cal Jells	22,140	2656.80
C 221149	6/28/46	369 cs Cal Jells	19,170	2300.40
C 221448	7/2/46	1027 cs Cal Jells	30,810	3697.20
C 222035	7/5/46	744 cs Cal Jells	22,320	2678.40
C 222221	7/11/46	941 cs Cal Jells	28,230	3387.60
C 223638		1139 cs Cal Jells	34,170	4100.40
C 221973		455 cs Cal Jells	13,650	1638.00
C 223397	7/9/46	700 cs Cal Jells	21,000	2520.00
		Total Weight	242,190	

March

28 Shotwell –

We received

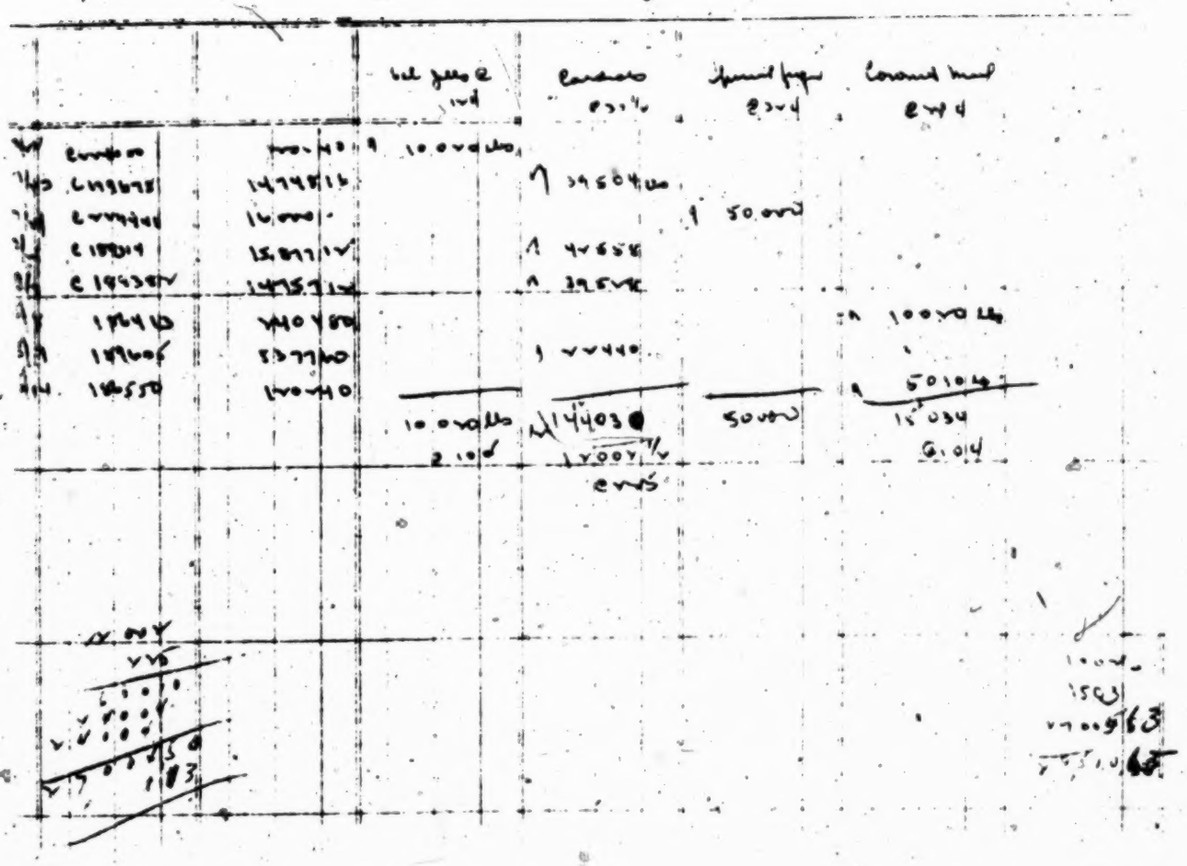
496 cases Rum Drops invoiced at 7¾ lb

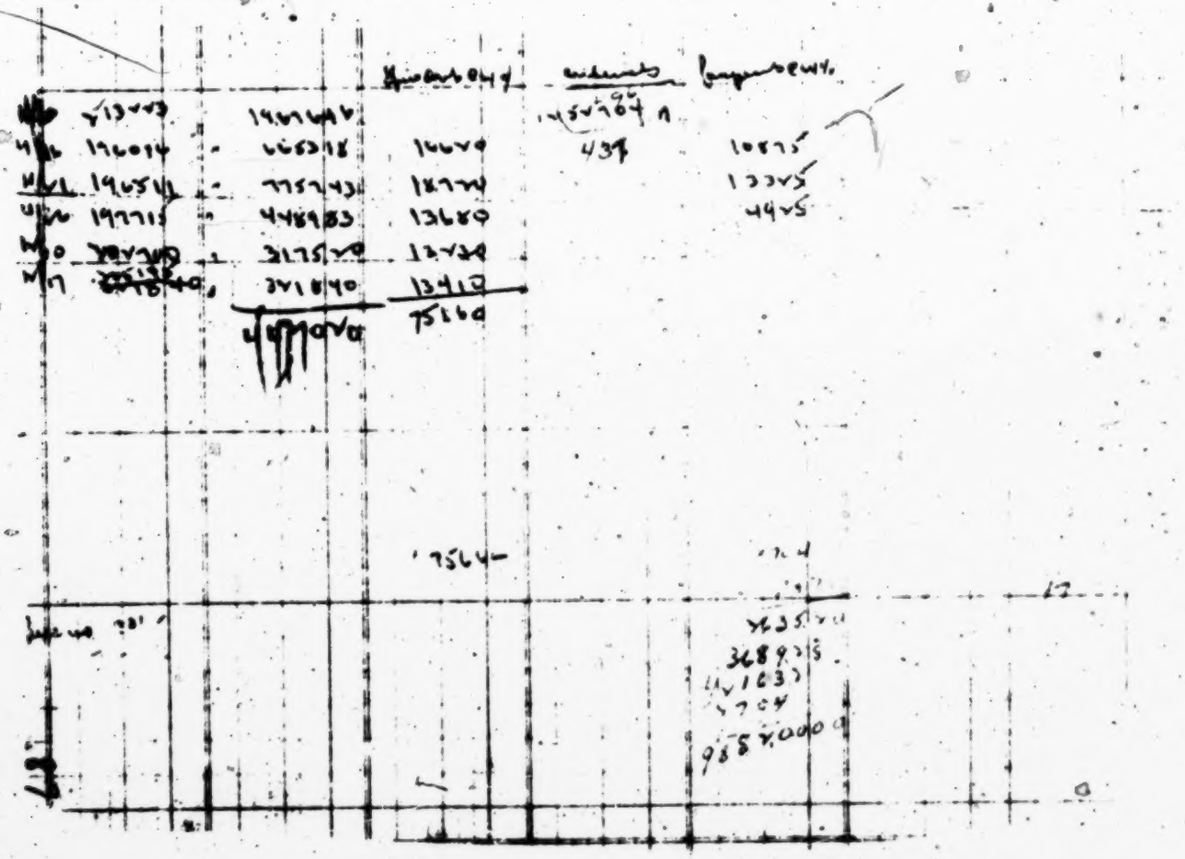
Total pounds 14880

We also gave them .10 lb extra or $1488.

We invoiced the goods for 9 3/4 but actually got .29 lb. or a total of $4315.20

4315.20
1488.00 To Shotwell
2827.20
1421.79 – Our invoice to customer
1405.41 additional cash gain book keeper entered as cash sale





4/30	Shotwell			
	We received 749 cases Gum Drops 22,474#			
	at 7¾¢ per lb			1707 43
	We also gave them 10¢ per lb extra			2247 00
	We invoiced the mdse @ 18¢ per lb but rec'd 27¢			6064 90
	To Shotwell	1707 43		
	" "	2247 00		
		3954 43		
	our invoice to Customer	4044 60		
	Cash from Customer given to bookkeeper			
	as Cash sale	1790 17		

5/13	Shotwell.		
	We received 663 cases 19890# invoiced @ 8¼¢		1640 93
	We also gave them 10¢ per lb extra		1989 00
			3629 93
	We invoiced this mdse @ 19¢ per lb		
	to our Customer		3779 10
	additional Cash as Cash sale to bookkeeper		1790 10
			5569 20

4	29	Shotwell		
		We received 465 Cases 13950# Spice Stamps @ 08¾¢		1150.88
		We also gave them 10¢ per lb extra		1395.00
		We invoiced to customer at 16¢		
		but actually got 29¢ or		4045.50
		To Shotwell	1150.88	
			1395.00	
			2545.88	
		our invoice to customer		2232.00
		additional cash to bookkeeper cash sales		1813.50
				4045.50

SHOTWELL SHIPMENTS
Gum Work

March 25	496	Gum Drops	14880 lbs.	10 lbs.	$1488.00
April 1	700	Spice Drops	21000 lbs.	10 lbs.	2100.00
April 10	283	Spice Drops	8940 lbs.	10 lbs.	849.00
April 12	700	Gum Drops	21000 lbs.	10 lbs.	2100.00
April 13	329	Gum Drops	9870 lbs.	10 lbs.	987.00
April 18	749	Gum Drops	22470 lbs.	10 lbs.	2247.00
April 20	663	Spice Strings	19890 lbs.	10 lbs.	1989.00
April 25	822	Gum Drops	24660 lbs.	10 lbs.	2466.00
April 25	500	Spice Strings	15000 lbs.	10 lbs.	1500.00
April 27	465	Spice Strings	13950 lbs.	10 lbs.	1395.00
April 30	739	Gum Drops	22170 lbs.	10 lbs.	2217.00
April 30	60	Spice Strings	1800 lbs.	10 lbs.	180.00
					$19518.00

CARDINALS

April 10	1204 doz.	2.25 doz.	2709.00
April 13	840 doz.	2.25 doz.	1890.00
April 30	1788 doz.	2.25 doz.	4023.00
May 4	1500 doz.	2.25 doz.	3375.00
May 6	912 doz.	2.25 doz.	2052.00
			$14049.00

TOTAL 33,567.00

ON ACCOUNT 1488.00
14000.00

Money to Kraine
for Mr. Cain 1450.00

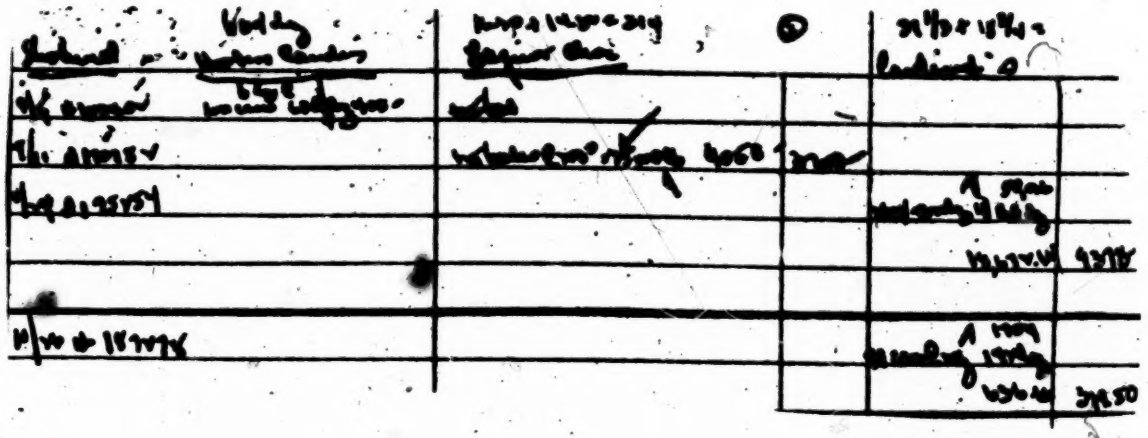
16,938.00

Balance $ 16,629.00

[fol. 91]

GOVERNMENT EXHIBIT 122C

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	
[illegible]	[illegible]	[illegible]			
[illegible]		[illegible]	[illegible]		
[illegible]				[illegible]	
				[illegible]	[illegible]
[illegible]				[illegible]	
				[illegible]	[illegible]



[fol. 92]

GOVERNMENT EXHIBIT 122D

GENERAL CONFECTIONS, Inc.

40 WEST 170th STREET - BRONX 52, N. Y.

Date 10/7/46

Pay To: Cash & Shotwell

Amount 14 V 35

For

FILE
52 C 143
FEB 19 19[illegible]
AT ... O'C[illegible]
ROY H. [illegible]

Government Exhibit 122D — Defendants Exhibit — Iden. / Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division — BEFORE BARNES J.
No.
Roy E. Fuller - Official Court Reporter

Date Paid: 10/7/46

Check No. 0

Authorized By: David Lubben

Government Exhibit 101

[illegible] Statements

Gum Drops

Mar 25	4[illegible]	Gum Drops	14880 lbs	.10 lb	$1488.00
April 1	700	Spice Strings	21000 lbs	.10 lb	$2100.00
April 10	283	"	8490 lbs	.10 lb	849.00
April 12	700	Gum Drops	21000 lbs	.10 lb	2100.00
April 13	329	"	9870 lbs	.10 lb	987.00
April 18	749	" "	22410 lbs	.10 lb	2247.00
April [illegible]	663	Spice Strings	19890 lbs	.10 lb	1989.00
April [illegible]	822	Gum Drops	24660 lbs	.10	2466.00
April 25	500	Spice Strings	[illegible]		1500.00
April 27	465	" "	13950	10	1395.00
April 30	739	Gum Drops	22170	10	2217.00
April 30	60	Spice Strings	1800	10	180.00
					19518.00

Cardinals

April 10	1204 doz	2.25 doz	[illegible]
April 13	840 doz	2.25 "	[illegible]
April 30	1788 doz	2.25 "	4[illegible]
May 4	1500 doz	2.25 doz	[illegible]
May 6	912 doz	2.25 doz	[illegible]
	6244 doz	~~[illegible]~~	14[illegible]
	225 doz		
	$14047.00		

Government Exhibit 101 — Defendants Exhibit — ( ) Iden. ( ) Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division — BEFORE BARNES, J.

No.

Roy E. Fuller - Official Court Reporter

[fols. 88-89]

GOVERNMENT EXHIBIT 122

14

MANUFACTURERS TRUST COMPANY 1-30

(810 BROADWAY)

PAY TO THE ORDER OF Cash NEW YORK Oct 12 1946

$ 12235 00/100

Twelve thousand two hundred thirty five DOLLARS

GENERAL CONFECTIONS INC

No. David Lubben

PAY TO THE ORDER OF ANY BANK, BANKER OR TRUST OR THROUGH THE NEW YORK CLEARING HOUSE

Government Exhibit 122

Ray E. Fuller - Official Court Reporter

OCT 14 1946

David Lubben

O.K. To CASH

Edw. S. Hudson

[fol. 90]

GOVERNMENT EXHIBIT 122A

9/10/46

9/11 25000 lbs lighor @ 14.80 $3700.00
9/24 50,016 boxes cardinals @18 3/4¢ ~~9378.00~~
13078.00

[fol. 93]

GOVERNMENT EXHIBIT 124A

GENERAL CONFECTIONS, Inc.

40 WEST 170th STREET - BRONX 52, N. Y.

Date 11/7/46

Pay To: Cash - Stadwell

Amount 23 23 50

For Cabinet 2004 - 377-13

319.50

FILED
52 cr 143
FEB 19 1951

AT ... O'CLOCK ...
ROY H. JO...

Government Exhibit 124A — Defendant's Exhibit — (✓) Iden. (✓) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division BARNES J. — BEFORE
No.
Roy E. Fuller - Official Court Reporter

Date Paid: 11/7/46 11/23/46

Check No. 2004 2123 319.50

Authorized By: David Lubben

Government Exhibit 126

GENERAL CONFECTIONS, INC

40 WEST 170TH STREET

52 cr 143

NEW YORK Nov 1 1946 1-30/210

No. 1615

PAY TO THE ORDER OF Cash $2004 ... DOLLARS

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES

DATE		AMOUNT
Government Exhibit 126	Defendant's Exhibit	(✓) Iden. (✓) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division BARNES J.		BEFORE
No.		
Roy E. Fuller - Official Court Reporter		
TOTAL OF INVOICES		
TOTAL DEDUCTIONS		
AMOUNT OF CHECK		

IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

MANUFACTURERS TRUST COMPANY
1819 BROADWAY
NEW YORK

GENERAL CONFECTIONS, INC.

David Lubben PRES. TREAS.

CLEARING HOUSE
0822
NOV 12 46 0810

David Lubben
C.A. To Cash Only

GOVERNMENT EXHIBIT 126

[fol. 96]

GOVERNMENT EXHIBIT 126A

11/8/46

1704 cardinals @ 18/3/44 319.50

2010 lbs Cornet Mix
10020 lbs " "
2010 lbs " "
20040 lbs Cornet Mix @ 10¢ 2004.00
2323.50

@ 319.50
2004.00 $2323.50

[fol. 97]

GOVERNMENT EXHIBIT 126B

11/8/46

1704 cardinals @ 18/3/4¢ 319.50

5010 lbs Coronet Mix
10020 lbs " "
5010 lbs " "
20040 lbs Coronet Mix @ 10¢ 2004.00
2323.50

@ 319.50
2004.00 $2323.50

GENERAL CONFECTIONS, Inc.
40 WEST 170th STREET - BRONX 52, N. Y.

Pay To: Cash (Thoneville Mfg)
Amount 2004 -
For

W 187198 5010
W 187197 10020
W 187196 5010
20040 lbs @ 10¢

Pg 77-13

Date

Government Exhibit 126D Defendants Exhibit (✓) Iden. (✓) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division BEFORE BARNES J.
No.
Roy E. Fuller - Official Court Reporter

FILED
52 2143
FEB 13 1964

Date Paid: 11/7/46
Check No. W1417

Authorized By: David Lubben

[fols. 100-101]

GOVERNMENT EXHIBIT 133

14

MANUFACTURERS TRUST COMPANY

1815 [illegible]

PAY TO THE ORDER OF Cash NEW YORK Dec 4 19 46

$17190 25/100

Seventeen thousand one hundred ninety 25/100 DOLLARS

GENERAL CONFECTIONS INC

No David Lubben

David Lubben only

DEC 20 1946

PAY TO THE ORDER OF ANY BANK, BANKER OR TRUST CO. OR THROUGH THE NEW YORK CLEARING HOUSE PRIOR ENDORSEMENTS GUARANTEED

DEC 23 1946

THE NATIONAL CITY BANK OF NEW YORK

Defendants Exhibit

Gov. Exhibit 133 In the District Court of the United States, Northern District of Illinois, Eastern Division BARNES J.

No.

Roy E. Fuller - Official Court Reporter

52 of 143

[fol. 102]

GOVERNMENT EXHIBIT 133A

GENERAL CONFECTIONS, Inc.

40 WEST 170th STREET - BRONX 52, N. Y.

Date 12/4/46

Pay To: Cash - Shadwell

Amount $17,190.25

For

75,660 lb drops @10¼ 7566 -

52,704 cardinals @18¾ 9842

17408 -

Government Exhibit 133A Defendants Exhibit (✓) Idem. (✓) Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division BARNES J.

No.

Roy E. Fuller - Official Court Reporter

FILED

52 of 143

FEB 1[illegible]

AT [illegible]

ROY H. [illegible]

Date Paid:

Check No.

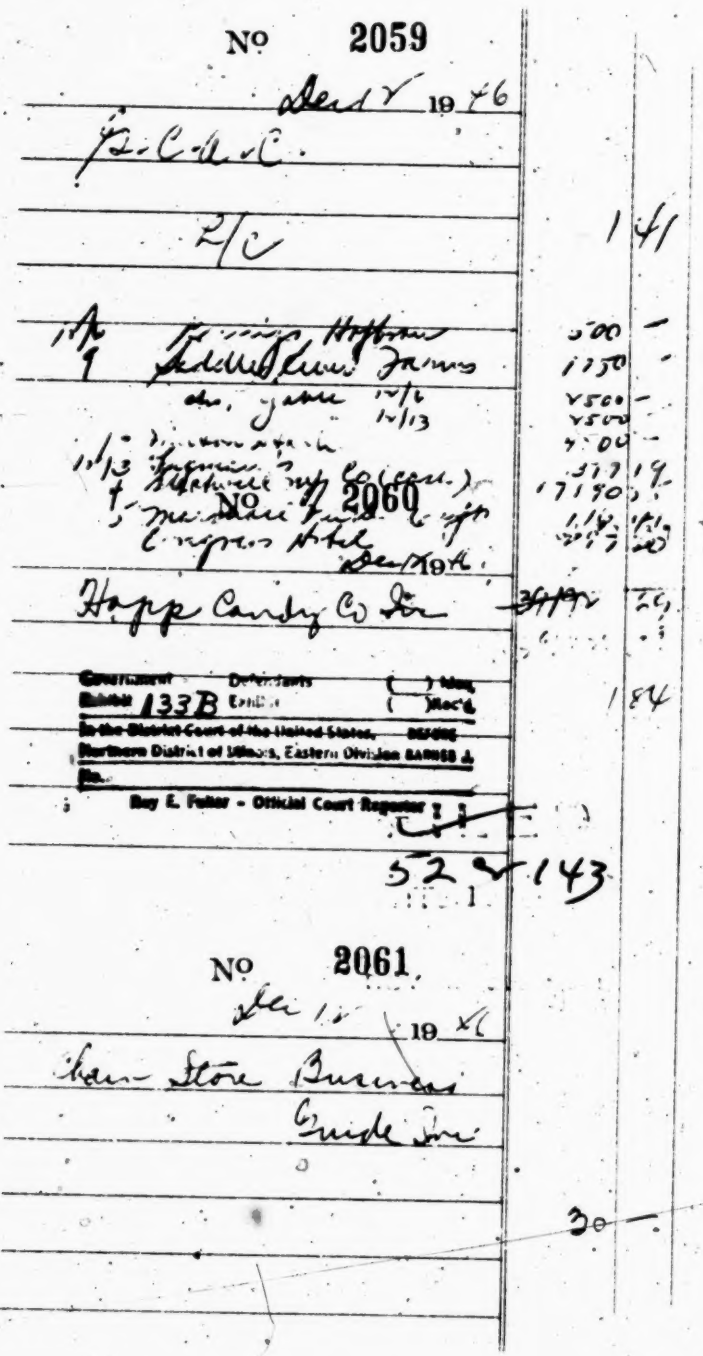
Authorized By:

David Lubben

8

[fol. 103]

GOVERNMENT EXHIBIT 133B



[fol. 104]

GOVERNMENT EXHIBIT 146

Standard Domestic Bill of Lading adopted by Carriers in Official, Southern, Western and Illinois Classification Territories March 15, 1922 as amended August 1, 1930 and June 15, 1941

UNIFORM STRAIGHT BILL OF LADING
ORIGINAL--NOT NEGOTIABLE.

Shipper's No 141185 A

Company Agent's No

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading

At CHICAGO 3/4 19 46 From A B C CDY SHIPPERS

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee—For purposes of notification only)

Consigned to ACE FORWARDING CO

Destination 63 BEACH ST - NEW YORK CITY State of N Y County of

Route SPECTO MOTOR

Delivering Carrier Car Initial Car No

NO. PACKAGES	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS*	*WEIGHT (Subject to Correction)	CLASS or RATE	CHECK COLUMN
1000	S CDY	31500#		

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

Signature of Consignor

If charges are to be prepaid, write or stamp here: "To be Prepaid."

COLLECT

Received $

to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per

(The signature here acknowledges only the amount prepaid.)

Charges Advanced:

$

Government Exhibit 146 — Defendant's Exhibit — Iden. — Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division — BEFORE BARNES J.
No.
Roy E. Fuller - Official Court Reporter

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."
Note. Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding $ per

A B C CDY SHIPPERS Shipper, Per AGENT PER

Permanent post office address of shipper CHICAGO ILL.

[fols. 105-106]

GOVERNMENT EXHIBIT 153

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES

DATE		AMOUNT
Government Exhibit 153	Defendants Exhibit	

In the District Court of the United States, Northern District of Illinois, Eastern Division

DEFORE BARNES J.

No.

Ray E. Fuller - Official Court Reporter

FILED

524143

TOTAL OF INVOICES

TOTAL DEDUCTIONS

AMOUNT OF CHECK

JOHNSON CLERK

IF INCORRECT PLEASE RETURN NO RECEIPT NECESSARY

GENERAL CONFECTIONS, INC.
40 WEST 170TH STREET
BRONX, N. Y.

No. 906 14

6/18/46 19 1 30 2106

PAY TO THE ORDER OF David Lubben $27000.00

THE SUM OF $27000.00 DOLLARS

MANUFACTURERS TRUST COMPANY
1819 BROADWAY
NEW YORK

David Lubben PRES. TREAS.

PAY TO THE ORDER OF ANY
BANK, BANKER OR TRUST COMPANY
OR THROUGH THE
NEW YORK CLEARING HOUSE

JUN 18 46 1436

MANUFACTURERS TRUST COMPANY
1-30 NEW YORK 1-30

David Lubben

Government Exhibit 153A

GENERAL CONFECTIONS, Inc.

40 WEST 170th STREET BRONX 52, N. Y.

Date June 17, 1946

Pay To: Cash

Amount $27322.67

For 2059 cases 2 dz each

1# Chocolates

Sold to McDonald Candy Corp (Bell, Vanderbilt)

McDonald

Date Paid: 4/16/46

Check No.

Authorized By

[fol. 109]

GOVERNMENT EXHIBIT 154

UNIFORM STRAIGHT BILL OF LADING / Government Exhibit 154

THIS MEMORANDUM is an acknowledgment that a bill of lading has been issued and is not the Original Bill of Lading, nor a copy or duplicate, covering the property named herein, and is intended solely for filing or record.

Shipper's No. A 189561

Company Agent's No.

RECEIVED subject to the classifications and tariffs in effect on the date of the receipt by the carrier of the property described in the Original Bill of Lading

At Chicago, Illinois 19 46 From GENERAL CONFECTIONS INC.

(Mail or street address of consignee. For purposes of notification only)

Consigned to MCDONALD CANDY CO.

Destination MILFORD State of OREGON County of

Route CMSTP&P MARENGO UP SP

Delivering Carrier Car Initial WFEX Car No. 67722

NO. PACKAGES	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	*WEIGHT (Subject to Correction)	CLASS or RATE	CHECK COLUMN
1722	FIBRE CASE CANDY	53569 lbs.		

(1) STOP OFF AT MCDONALD CANDY CO SALEM OREGON

(2) STOP OFF AT MCDONALD CANDY CO EUGENE OREGON

TO BE ICED WITH 6000 LBS. CHUNK ICE

Government Exhibit 154 Defendants Exhibit ( ) Iden. ( ) Rec'd.

In the District Court of the United States. BEFORE Northern District of Illinois, Eastern Division BARNES J.

FILED 52 or 143 TIT 19 P A

AT ROY H. JOHNSON CLERK

AUG 9 1946

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

Signature of Consignor

If charges are to be prepaid, write or stamp here. To be Prepaid.

Received $

to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per

(The signature here acknowledges only the amount prepaid.)

Charges Advanced

$

"If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is carrier's or shipper's weight."

Note. Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding $ per

GENERAL CONFECTIONS INC. Shipper, Per AGENT PER 3

Permanent postoffice address of shipper 40 West 170th St., Bronx 52, New York

Uniform Domestic Straight Bill of Lading adopted by Carriers in Official, Southern, Western and Illinois Classification Territories

UNIFORM STRAIGHT BILL OF LADING
ORIGINAL—NOT NEGOTIABLE.

Government Exhibit [illegible]

Company

RECEIVED, subject to the classifications and tariffs in effect on the date of the [illegible]

At Chicago, Illinois 19 46 From The Shotwell Mfg. Co.

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked [illegible] the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the [illegible] said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed [illegible] over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service [illegible] ditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to [illegible]

(Mark [illegible])

Consigned to General Confections, Inc. 40 West 170th St.

Destination Bronx 52 State of New York

Route Spector Motor

Delivering Carrier Car Initial

NO. PACKAGES	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	WEIGHT (Subject to Correction)	CLASS or RATE	CHECK COLUMN
3[illegible]5	Fibre C[illegible] Candy	10770		

52C-143

Government Exhibit 155 Defendants Exhibit (✓) Iden. (✓) Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division BEFORE BARNES J.

No.

Roy E. Fuller - Official Court Reporter

(If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is carrier's or shipper's weight.)

Note. Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding $ per

The Shotwell Mfg. Co. Shipper, Per AGENT PER

Permanent postoffice address of shipper 3501 Potomac [illegible] 51, Illinois

[fol. 111]

GOVERNMENT EXHIBIT 155A

EATSUM FOOD PRODUCTS CO.

RECEIVING TICKET

No. 4260

RECEIVED FROM [illegible] DATE [illegible]

ADDRESS [illegible]

SHIPPED VIA [illegible] OUR ORDER No.

QUANTITY	UNIT	DESCRIPTION	WEIGHT
[illegible]	[illegible]	Corn [illegible] Mix	

FRT. OR EXP. CHARGES

PREPAID OR COLLECT

CONDITION

FILED
52 [illegible] 143
FEB 10 1954
AT [illegible]
ROY [illegible]

Government Exhibit 155A Defendants Exhibit (✓) Iden. (✓) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division BEFORE BARNES J.
No.
Roy E. Fuller - Official Court Reporter

RECEIVED BY

Defendant's Exhibit 156
In the District Court of the United States
Northern District of Illinois, Eastern Division

14

1-30

TITLE GUARANTY TRUST COMPANY

New York, February 21, 19 46

$ 7500 00/100

Seventy five hundred 00/100 DOLLARS

GENERAL CONFECTIONS

David Lubben

FILED
FEB 19 19 46

No.

David Lubben
[illegible]
Ch 15 Cook

[fol. 114]

GOVERNMENT EXHIBIT 156A

GENERAL CONFECTIONS, Inc.

40 WEST 170th STREET - BRONX 52, N. Y.

Date 8/29/46

Pay To: Cash Shadwell

Amount 75.00

For when made

Government Exhibit 156A Defendants Exhibit ( ) Iden. ( ) Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division BEFORE SAMUEL J.

No. 0

Roy E. Fuller - Official Court Reporter

P85

FILED
52 C 143
FEB 10 1951
AT ... ROY H. JOHNSON

Date Paid: 8/29/46

Check No. 0

Authorized By: David Lubben

GOVERNMENT EXHIBIT 157

Government Defendants ( ) Iden.
Exhibit 157 Exhibit (✓) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division
No.
Roy E. Fuller - Official Court Reporter

The SHOTWELL MFG. CO.

Confectionery Specialties

3501 W. POTOMAC AVE. CHICAGO 51, ILLINOIS

INV. NO. C 191554

INVOICE DATE

F. O. B. CHICAGO

SOLD TO SAME

SHIP TO

ADDRESS GENERAL CONFECTIONS INC

CITY 49 W 170TH ST

STATE OF NEW YORK 52 N Y

ROUTE

TERMS: CASH 10 DAYS NET 30 1% ON MARSHMALLOW 2% ON CANDY

SHIP VIA	YOUR ORDER NO.	DATE WANTED	BROKER	SOLD BY

CASES	DESCRIPTION	CARTONS OR WEIGHT	PRICE	EXTENSION
BBLS	/ SPECIAL SWEET /			
72	CORN SYRUP LOT 3108	49207	06#	2952 42
66	" " LOT 4829	41863	06#	2511 78
63	" " LOT 7234	43176	06#	2590 56
68	" " LOT 7296	47229	06#	2833 74
72	" " LOT 7330	49423	06#	2965 38
65	" " LOT 7921	43951	06#	2637 06
73	" " LOT 7922	49951	06#	2997 06
69	" " LOT 8738	47158	06#	2829 48
70	" Cases Candy LOT 8787	47559	06#	2853 54
67	" " LOT 9081	45950	06#	2757 00
70	" " LOT 9101	47816	06#	2868 96

IMPORTANT:- SHOTWELL'S CANDIES are guaranteed to reach you in first class condition. We do not guarantee their age or keeping quality.
WATCH YOUR STOCK. By ordering frequently—supplying fresh merchandise to your trade at all times—you will greatly increase your sales and profits.
NO GOODS ARE TO BE RETURNED WITHOUT OUR WRITTEN AUTHORITY.

The Shotwell Mfg. Co. of Chicago, Ill. [redacted] believe, hereby guarantees to the purchaser, that no article listed herein is adulterated or misbranded within the meaning of the Federal Food Drug, and Cosmetic Act, passed by the Congress of the United States and approved June 25, 1938, or is an article which may not, under the provisions of Section 404 or 505 of the A t, be introduced into Interstate Commerce.

THE SHOTWELL MFG. CO.

Prices subject to [illegible] Orders accepted [illegible]. All [illegible] Col. war, shortage of shipping and conditions beyond our control.

[fols. 116-117]

GOVERNMENT EXHIBIT 158

GOVERNMENT EXHIBIT 158A

14

NEW YORK Oct 17 1946 No 1194

MANUFACTURERS TRUST COMPANY

1819 BROADWAY

1-30
210

PAY TO THE ORDER OF Cash $25,929.00

THE SUM OF $25,929 DOLLARS 51 CTS

DOLLARS

Government Exhibit 158A Defendants Exhibit

In the District Court of the United States, Northern District of Illinois, Eastern Division

BEFORE BARNES J.

No.

Roy E. Fuller - Official Court Reporter

FEB 19 1954

52 cr 143

RESERVE TRADING CORPORATION

ROY H. JOHNS

David Lubben

David Lubben

Reserve Trading Corp
~~GENERAL CONFECTIONS, Inc.~~
40 WEST 170th STREET - BRONX 52, N. Y.

Date Oct 17, 1946

Pay To: Cash (Shotwell)

Amount $35929.81

For Overage on syrup purchase at rate 7¢ lb on their invoice # 191554.
I have already given them $10000. so all we are giving now is $25929.81

Government Exhibit 158B
Defendants Exhibit
( ) Iden.
( ) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division
BEFORE BARNES J.
No.
Roy E. Fuller - Official Court Reporter

Pr. ~~FILED~~
528143

Date Paid: 10/17/46
Check No. 8.1194 AT

Authorized By:
David Zubben

GOVERNMENT EXHIBIT 159

Government Exhibit 159 Defendants Exhibit ( ) Iden. ( ) Rec'd

In the District Court of the United States, Northern District of Illinois, Eastern Division

No.

Roy E. Fuller - Official Court Reporter

The SHOTWELL MFG. CO.

Confectionery Specialties

3801 W. POTOMAC AVE. CHICAGO 51, ILLINOIS

INV. NO. C 187191

INVOICE DATE 10-18-46

F. O. B. CHICAGO

SOLD TO: SAME

52 & 143

SHIP TO: GENERAL CONF INC

ADDRESS: 40 WEST 170TH ST

CITY: NEW YORK CITY

STATE OF: N Y

ROUTE:

TERMS: CASH, 10 DAYS NET 30. 1% ON MARSH-MALLOW 2% ON CANDY

SHIP VIA	YOUR ORDER NO.	DATE WANTED	BROKER	SOLD BY

CASES	DESCRIPTION		CARTONS OR WEIGHT	PRICE	EXTENSION
70	BARRELS SWEET SYRUP LOT 8572	47816#		06#	2868 96
70	BARRELS SWEET SYRUP LOT 8426	48338#		06#	2900 28
71	BARRELS SWEET SYRUP LOT 8292	48543#		06#	2912 58
63	BARRELS SWEET SYRUP LOT 8291	43113#		06#	2586 78
		1878 10			11268 60
27		1878 10			
60	Cases Candy				
21 v 08	11/15/46 6000				
21 v 09	11/20/46 5464.60				
	11464.60		10/19/P		

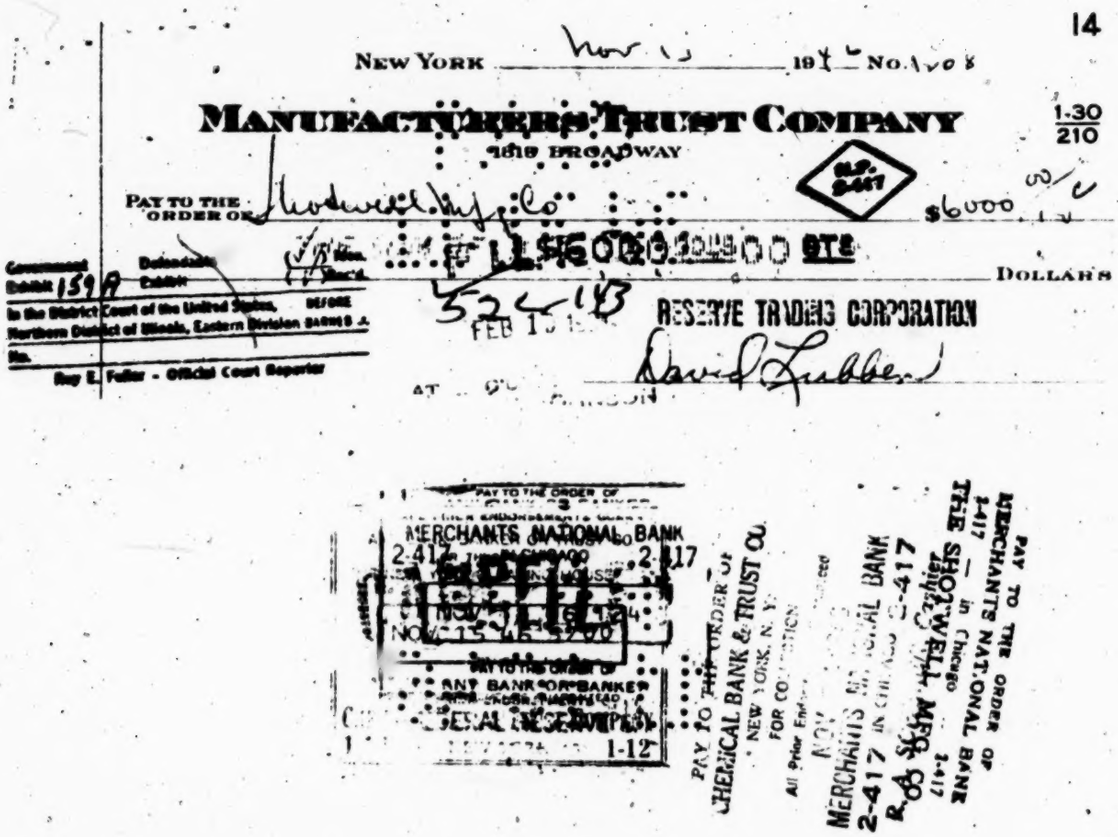
IMPORTANT:—SHOTWELL'S CANDIES are guaranteed to reach you in first class condition. We do not guarantee their sale or keeping quality.
WATCH YOUR STOCK:—By ordering frequently—supplying fresh merchandise to your trade at all times—you will greatly increase your sales and profits.
NO GOODS ARE TO BE RETURNED WITHOUT OUR WRITTEN AUTHORITY.

The Shotwell Mfg. Co. of Chicago, Ill., Seller, hereby guarantees to the purchaser, that no article listed herein is adulterated or misbranded within the meaning of the Federal Food Drug, and Cosmetic Act, passed by the Congress of the United States and approved June 25, 1938, or is an article which may not, under the provisions of Section 404 or 505 of the Act, be introduced into Interstate Commerce. THE SHOTWELL MFG. CO.

Prices subject to withdrawal or change without notice. All prices and deliveries subject to strikes, fires, riots, acts of God, war, shortage of shipping and conditions beyond our control.

[fols. 122-123]

GOVERNMENT EXHIBIT 159A



GOVERNMENT EXHIBIT 159B

14

NEW YORK Nov 13 1946 No. 1209

MANUFACTURERS TRUST COMPANY
1819 BROADWAY

1-30
210

PAY TO THE ORDER OF Shotwell Mfg Co. $5[illegible] 60 CTS

[illegible] 60 CTS

FILED

DOLLARS

Government Defendants (✓) Iden.
Exhibit 159B Exhibit (✓) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division. BARNES J.
No.
Roy E. Fuller - Official Court Reporter

52 c 143
FEB 10 1954

RESERVE TRADING CORPORATION
David Lubber

PAY TO THE ORDER OF
MERCHANTS NATIONAL BANK & TRUST CO.
2-417 IN CHICAGO
NEW YORK CLEARING HOUSE
NOV [illegible] 1-12

PAY TO THE ORDER OF
MERCHANTS NATIONAL BANK
2-417 in Chicago 3-417
THE SHOTWELL MFG. CO.

PAY TO THE ORDER OF
CHEMICAL BANK & TRUST CO
NEW YORK, N. Y.
FOR COLLECTION
All Prior Endorsements Guaranteed
NOV 1[illegible]
MERCHANTS NATIONAL BANK
2-417 IN CHICAGO 2-417
R. A. SCHEA JR. Cashier

[fols. 126-127]

GOVERNMENT EXHIBIT 160

Government Exhibit 160 | Defendants Exhibit | (✓) Iden. (✓) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division BEFORE BARNES J.
No.
Roy E. Fuller - Official Court Reporter

14

NEW YORK Nov 7 19 No. 1210

MANUFACTURERS TRUST COMPANY
1819 BROADWAY

1-30
210

PAY TO THE ORDER OF Cash $13146.70 ~~cpu~~

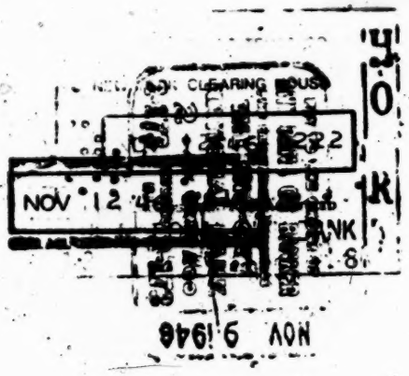
FILED $13146 70 CTS DOLLARS

52878

FEB 19 1954

AT ... O'CLOCK
ROY H. JOHNSON

RESERVE TRADING CORPORATION
David Lubben



David Lubben
OK to Cash Only
Edw. S. Urban

NEW YORK CLEARING HOUSE
NOV 12 1946
BANK
NOV 9 1946

[fol. 128]

GOVERNMENT EXHIBIT 160A

11/8/46

187,810 lbs syrup @ 7¢ $13,146.70

52 8-143 Paid

Government Exhibit | Defendants Exhibit | (✓) Iden. (✓) Rec'd.
In the District Court of the United States, Northern District of Illinois, Eastern Division BEFORE BARNES J.
No.
Roy E. Fuller - Official Court Reporter

GOVERNMENT EXHIBIT 160C

Government Defendants ( ) Iden.
Exhibit 160 C Exhibit ( ) Rec'd
In the District Court of the United States, Northern District of Illinois, Eastern Division
No.
Roy E. Fuller - Official Court Reporter

Pay To: Cash, Maxwell [illegible] 52 or 143

Amount [illegible]

For

difference between [illegible]

Date Paid: 11/7/44

Check No. [illegible]

Authorized By:

[illegible]

[fol. 130]

GOVERNMENT EXHIBIT 162

Form 725-B

WEEKLY EXPENSE ACCOUNT

Mr. David Lubben — Branch — Department — Week Ended Jan 20 19 46

DATE		FROM	TO	R. R. FARE	FULL-MAN	AUTOMOBILE: MILEAGE	AUTOMOBILE: RATE PER MILE	AUTOMOBILE: AMOUNT	HOTEL: NAME	HOTEL: AMOUNT	MEALS	INCIDENTALS: ITEM	INCIDENTALS: AMOUNT	TOTAL EXPENSE
Jan 14	BREAKFAST								Lake Shore Hotel Rooms	30 00	B.			
	LUNCH									12 00	L.			
	DINNER									18 00	D.			
Jan 15	BREAKFAST									20 00	B.			
	LUNCH									15 00	L.			
	DINNER									7 50	D.			
Jan 16	BREAKFAST									5 00	B.			
	LUNCH									33 00	L.			
	DINNER									27 50	D.			
Jan 17	BREAKFAST									11 00	B.			
	LUNCH									10 00	L.			
	DINNER									17 50	D.			
Jan 18	BREAKFAST									17 50	B.			
	LUNCH									20 00	L.			
	DINNER										D.			
Jan 19	BREAKFAST									20 00	B.			
	LUNCH									20 00	L.			
	DINNER									25 00	D.			
Jan 20	BREAKFAST									40 40	B.			
	LUNCH									28 30	L.			
	DINNER									10 00	D.			
		TOTALS								25 00				

I HEREBY CERTIFY THAT THE EXPENDITURES WERE MADE AS ABOVE STATED.

SIGNATURE OF TRAVELLER

CHARGE TO:

APPROVED BY: David Lubben (DEPARTMENT HEAD)

AUDITED BY:

REMARKS:

ITINERARY OF MR. — WEEK ENDED — 19

DATE	DAY	TOWN	HOTEL
	SUN.		
	MON.		
	TUE.		
	WED.		
	THU.		
	FRI.		
	SAT.		

[fol. 131]

GOVERNMENT EXHIBIT 163

Form 123-B

WEEKLY EXPENSE ACCOUNT

MR. David Lubben BRANCH DEPARTMENT WEEK ENDED Feb 10 1945

DATE		FROM	TO	R.R. FARE	PULLMAN	AUTOMOBILE MILEAGE	RATE PER MILE	AMOUNT	HOTEL NAME	AMOUNT	MEALS	SUNDRIES ITEM	AMOUNT	TOTAL EXPENSE
Feb 4	SUNDAY										B.	Misc Expense	15 00	
											L.			
											D.			
Feb 5	MONDAY	New York	Philadelphia		13 92				(Bercu - Bonomo & Self		B.	Tickets Train	13 92	
		Philadelphia	N.Y.C		13 92						L.	Misc expense	20 00	✓
											D.			
Feb 6	TUESDAY	New York	Chicago		46 69						B.	Tip for Ticket	10 00	
											L.	Misc expense	20 00	
											D.			
Feb 7	WEDNESDAY	Chgo							Shalwell - Chase & Co Dunckerman		B.	Misc Expense	25 00	✓
											L.			
											D.			
Feb 8	THURSDAY	Chicago	New York		91 38				57 c/143		B.	car Expense	7 18	✓
		With Gertz & Daughter									L.	Misc expense	25 00	
											D.			
Feb 9	FRIDAY										B.	Misc Expense	25 00	✓
											L.			
											D.			
Feb 10	SATURDAY	Dinner & Theater Party Newberry - Enquirer - 28 People in all -							Theater Upon Central Park		B.	28 Tickets	315 00	
											L.	Dinner	225 00	
												Latin Quarter	250 00	
											D.	Misc Expense	25 00	
		TOTALS			1391									

I HEREBY CERTIFY THAT THE EXPENDITURES WERE MADE AS ABOVE STATED.

David Lubben
SIGNATURE OF TRAVELLER

CHARGE TO _____ DEPARTMENT

APPROVED BY _____ DEPARTMENT HEAD

AUDITED BY _____

REMARKS

ITINERARY OF MR. _____ WEEK ENDED _____ 19__

DATE	DAY	TOWN	HOTEL
	SUN.		
	MON.	163	
	TUE.		
	WED.		
	THU.		
	FRI.		
	SAT.		

[fol. 132]

GOVERNMENT EXHIBIT 164

Form 722-B

WEEKLY EXPENSE ACCOUNT

MR. David Lubben BRANCH DEPARTMENT WEEK ENDED Mar 10 1943

DATE		FROM	TO	R. R. FARE	PULLMAN	AUTOMOBILE MILEAGE	AUTOMOBILE RATE PER MILE	AUTOMOBILE AMOUNT	HOTEL NAME	HOTEL AMOUNT	MEALS	SUNDRIES ITEM	SUNDRIES AMOUNT	TOTAL EXPENSE
Mar 4	SUNDAY										B.	Misc Expense	10 00	
											L.			
											D.			
Mar 5	SUNDAY		Mr Frank Huebner — Shotwell								B.	Dinner Expense	25 00	
			in town						After Theater Dinner				40 00	
											D.	Misc Expense	10 00	
Mar 6	TUESDAY		Mr Frank Huebner —								B.	Misc Expense	20 00	
											L.	Tip for his ticket	10 00	
											D.			
Mar 7	WEDNESDAY										B.	Misc Expense	10 00	
											L.			
											D.			
Mar 8	THURSDAY										B.	Misc Expense	10 00	
											L.			
											D.			
Mar 9	FRIDAY										B.	Misc Expense	10 00	
			Ben Wachtel						Dinner Expense		L.		25 00	
											D.			
Mar 10	SATURDAY		Dinner Expense — Bercus - Burrys - Stones								B.			
			Hankermeyers						Stork Club		L.		125 00	
											D.	Misc Expense	10 00	
		TOTALS												

5 yld 143

I HEREBY CERTIFY THAT THE EXPENDITURES WERE MADE AS ABOVE STATED.

David Lubben
SIGNATURE OF TRAVELLER

CHARGE TO _____ DEPARTMENT

APPROVED BY _____ DEPARTMENT HEAD

AUDITED BY _____

REMARKS _____

ITINERARY OF MR. _____ WEEK ENDED _____ 19__

DATE	DAY	TOWN	HOTEL
	SUN.		
	MON		
	TUE.		
	WED.		
	THU.		
	FRI.		
	SAT.		

Government Exhibit 164 Defendants Exhibit ( ) Ident. ( ) Rec'd

In the District Court of the United States, Northern District of Illinois, Eastern Division

Roy E. Fuller - Official Court Reporter

[fol. 133]

GOVERNMENT EXHIBIT 165

Form 723-B

WEEKLY EXPENSE ACCOUNT

MR. David Tubben BRANCH DEPARTMENT WEEK ENDED Mar 31 1945

DATE	FROM	TO	R. R. FARE	PULLMAN	AUTOMOBILE MILEAGE	AUTOMOBILE RATE PER MILE	AUTOMOBILE AMOUNT	HOTEL NAME	HOTEL AMOUNT	MEALS	SUNDRIES ITEM	SUNDRIES AMOUNT	TOTAL EXPENSE
Mar 25 SUNDAY	New York									B.	Misc Expense	15 00	
										L.			
										D.			
Mar 26 MONDAY	New York									B.	Misc Expense	15 00	
										L.	Dinner Party	40 00	
										D.	Brief Case Company	44 17	
Mar 27 TUESDAY	New York									B.	Misc Expense	20 00	
										L.	Ass't Registrar for Collector Chandler Badge & Flowers	60 00	
										D.			
Mar 28 WEDNESDAY	New York	Chicago Ill	130 60		(Mrs Hershberger)					B.	Dinner Expense	20 00	
										L.			
										D.			
Mar 29 THURSDAY	Chicago									B.	Misc Expense	20 00	
										L.	Misc Expense	20 00	
										D.			
Mar 30 FRIDAY	Chicago	6 Urbandale Dinner —								B.	Meal Expense	20 00	
											Dinner Expense	35 00	
										L.	Misc Expense	20 00	
										D.			
Mar 31 SATURDAY	Chicago	6 Urbana 22 Chg Check						Hertz Motors — Hurbana		B.	Gas Expense	27 00	
											Phone Expense	13 70	
										L.	Dinner Expense	125 00	
										D.	Misc Expense	20 00	
	TOTALS		130 60									584 87	715 47

I HEREBY CERTIFY THAT THE EXPENDITURES WERE MADE AS ABOVE STATED.

David Tubben
SIGNATURE OF TRAVELLER

5-2 cr 43

CHARGE TO _____ DEPARTMENT

APPROVED BY _____ DEPARTMENT HEAD

AUDITED BY _____

REMARKS

ITINERARY OF MR. _____ WEEK ENDED _____ 19__

DATE	
SUN.	
MON.	
TUES.	
WED.	
THU.	
FRI.	
SAT.	

Exhibit 165

In the District Court of the United States, Southern District of Illinois, Eastern Division

Ray E. Fuller - Official Court Reporter

[fol. 134]

GOVERNMENT EXHIBIT 166

Form 723-B

WEEKLY EXPENSE ACCOUNT

MR. David Lubben BRANCH DEPARTMENT WEEK ENDED May 5 1945

DATE		FROM	TO	R. R. FARE	PULLMAN	AUTOMOBILE MILEAGE	RATE PER MILE	AMOUNT	HOTEL NAME	AMOUNT	MEALS	SUNDRIES ITEM	AMOUNT	TOTAL EXPENSE
April 29	SUNDAY										B.	Misc expense	20 00	
											L.			
											D.			
April 30	SUNDAY										B.	Misc expense	20 00	
											L.			
											D.			
May 1	THURSDAY										B.	Misc expense	20 00	
											L.			
											D.			
May 2	WEDNESDAY										B.	Misc expense	20 00	
											L.			
											D.			
May 3	THURSDAY	New York	Chgo						Sherman		B.	Misc expense Cabs	25 00 5 00	
											L.			
											D.			
May 4	FRIDAY	Chgo									B.	Misc expense	25 00	
											L.			
											D.			
May 5	SATURDAY	Chgo									B.	Fagman Inc Misc expense	118 50 25 00	
											L.			
											D.			
		TOTALS												

FEB. 52 ✓ 143 "

SON "

I HEREBY CERTIFY THAT THE EXPENDITURES WERE MADE AS ABOVE STATED.

David Lubben
SIGNATURE OF TRAVELLER

CHARGE TO _____ DEPARTMENT

APPROVED BY _____ DEPARTMENT HEAD

AUDITED BY _____

REMARKS:

ITINERARY OF MR. _____ WEEK ENDED _____ 19__

DATE	DAY	TOWN	
		Government Exhibit 166 Defendants Exhibit	(✓) Rec'd.
		In the District Court of the United States, Northern District of Illinois, Eastern Division	BEFORE BARNES J.
		Roy E. Fuller - Official Court Reporter	
	THU.		
	FRI.		
	SAT.		

[fol. 139]

GOVERNMENT EXHIBIT 177

GENERAL CONFECTIONS INC
SCHEDULE OF CHECKS DRAWN TO CASH AND OTHERS
JULY OCT 1946

DATE	CHECK NO	PAYEE	AMOUNT	ENDORSER	CHARGED TO ACCT	
7/3	0935	PAYROLL	11636	-	PAYROLL CONTROL	CHECKED TO PAYROLL A/C
7/3	0939	PAYROLL	274860	-	"	CHECKED TO PAYROLL A/C
7/3	0940	CASH	60000	FRIEDA STRUM	ACCTS PAYABLE	OVERAGE ON "C V POWDER
7/3	0941	CASH	2600000	DAVID LUBBEN	"	CHECK SHIPMENTS SHORT WILL REMIT ON
7/8	0944	"	450000	DAVID LUBBEN	"	300 BAGS DONUT MIX TOTAL COST $ 47.00
7/10	0947	DAVID LUBBEN	250000	" "	D LUBBEN - SPECIAL	
7/10	0948	PAYROLL	83960	-	PAYROLL CONTROL	
7/10	0949	"	82396	-	"	CHECKED TO PAYROLL A/C
7/10	0950	PETTY CASH	20000	FRIEDA STRUM	PETTY CASH	CHECKED TO PAYROLL A/C
7/10	0951	PAYROLL	1100	-	PAYROLL CONTROL	-
7/10	0952	ROY HANNEMEYER	3100	ROY HANNEMEYER	ACCTS PAYABLE	CHECKED TO PAYROLL A/C
7/11	0953	DAVID LUBBEN	150000	DAVID LUBBEN	D. LUBBEN - SPECIAL	EXPENSE A/C WEEK ENDED [illegible]
7/11	0954	CASH	705000	DAVID LUBBEN IRVING CARNEY	ACCTS PAYABLE	300 BAGS DONUT MIX
7/11	0955	CASH	1112500	DAVID LUBBEN ROY HANNEMEYER	"	FOR 1000 CASES MOM CANDY
7/11	0956	PAYROLL	242001	-	PAYROLL CONTROL	CHECKED TO PAYROLL A/C
7/12	0957	"	88433	-	"	CHECKED TO PAYROLL A/C
7/12	0958	ROY HANNEMEYER	3150	ROY HANNEMEYER	ACCTS PAYABLE	BYP ACCTS WEEKS ENDED 7/6, 7/13
7/13	0959	CASH	675833	MICHAEL COHEN	ACCTS PAYABLE	39719 LBS CORN SYRUP PURCHASE
7/13	0960	"	975000	DAVID LUBBEN ROY HANNEMEYER	"	PURCHASE OF CORN SYRUP JE 67
7/13	0961	"	138000	ROY HANNEMEYER	"	270 CASH ORIGINAL
7/13	0962	"	50000	ROY HANNEMEYER	"	COST OF (1) WATCH GIVEN TO [illegible] - [illegible]
7/13	0963	ROY HANNEMEYER	3150	ROY HANNEMEYER	"	EXPENSE ACCTS WEEKS ENDED [illegible] AND 7/13 46
7/13	0964	CASH	1200000	OUT (CK NOT CASHED - W OF [illegible])	"	FOR 300 STEEL DRUMS USED IN PACKAGING CORN SYRUP (USED TO MIX DONUT MIX)
7/13	0965	CASH - AMSCO PACKAGE	149000	DAVID LUBBEN	"	TO REIMBURSE D LUBBEN FOR PURCHASE (1) GAS WELDING TORCH WITH PERSONAL FUNDS
7/13	0993	CASH	400000	DAVID LUBBEN	"	TO D G LUBBEN SPECIAL ACCOUNT JE 91
7/14	0996	PAYROLL	243680	-	PAYROLL	CHECKED TO PAYROLL A/C
7/14	0997	"	87627	-	"	CHECKED TO PAYROLL A/C
7/14	0998	"	18922	-	"	CHECKED TO PAYROLL A/C
7/14	0999	PETTY CASH	5098	FRIEDA STRUM	PETTY CASH	
7/15	1000	CASH	112500	ROY HANNEMEYER	GENERAL	15 1/2 DRUMS LIQUID SYRUP
7/15	1011	AL NORTHERN	53980	AG BARMEIER	ACCTS PAYABLE	FOR EXPENSES - CONSULTING - (AUTH FILED UNDER HANNEMEIER)
7/17	1025	CASH	225000	ROY HANNEMEYER	"	25 DRUMS LIQUID SYRUP
7/31	1048	PAYROLL - CASH	85655	-	PAYROLL	CHECKED TO PAYROLL A/C
	1049	" "	302732	-	"	CHECKED TO PAYROLL A/C
	1050	CASH - MISC PURCH	220000	ROY HANNEMEYER	ACCTS PAYABLE	25 DRUMS LIQUID SYRUP
	1055	" "	110000	ROY HANNEMEYER	"	15 1/2 DRUMS LIQUID SYRUP
8/1	1004A	ROY HANNEMEYER	535	ROY HANNEMEYER	"	EXPENSE ACCT WEEK ENDED 7/27/46
8/2	1031	CASH	810700	ROY HANNEMEYER	"	OVERAGE ON CORN SYRUP
8/6	1054	DAVID G LUBBEN	100000	DAVID G LUBBEN	D LUBBEN SPECIAL	
8/7	1059	PAYROLL	398197	-	PAYROLL	CHECKED TO PAYROLL A/C
	1060	"	93853	-	"	CHECKED TO PAYROLL A/C
	1062	PETTY CASH	5000	FRIEDA STRUM	PETTY CASH	
8/8	1082	ROY HANNEMEYER	299432	ROY HANNEMEYER	RESERVE TRADING	RESERVE TRADING FND E&H FOOD SALE AMOUNT AUG 29 1941 OR 13Y
8/13	1098	CASH	115000	IRVING CARNEY	ACCTS PAYABLE	15 1/2 DRUMS LIQUID SYRUP
	1099	"	750000	IRVING CARNEY	"	WENT TO SAM PROCOPIO THEY SHIPPED 60 NOT CRUMEN @ 38 LB

[fol. 135]

GOVERNMENT EXHIBIT 167

Form 723-B

WEEKLY EXPENSE ACCOUNT

MR. David Lubben BRANCH DEPARTMENT WEEK ENDED May 12 19 45

DATE	FROM	TO	R. R. FARE	PULLMAN	AUTOMOBILE MILEAGE	AUTOMOBILE RATE PER MILE	AUTOMOBILE AMOUNT	HOTEL NAME	HOTEL AMOUNT	MEALS	SUNDRIES ITEM	SUNDRIES AMOUNT	TOTAL EXPENSE
May 6 SUNDAY	Chgo							Sherman		B.	Misc expense	25 00	
										L.			
										D.			
May 7 MONDAY	Chgo							"		B.	Misc expense	25 00	
										L.			
										D.			
May 8 TUESDAY	Chgo	Urbana & Champaign						"		B.	Misc expense	25 00	
										L.	Lecture expense	75 00	
										D.			
May 9 WEDNESDAY	Chgo							"		B.	Misc expense	25 00	
										L.			
									180 61	D.			
May 10 THURSDAY	Chgo	Urbana & Champaign						"		B.	Ticket to show	00 00	
										L.	Misc expense	25 00	
										D.			
May 11 FRIDAY	Chgo							"		B.	Phone	6 13	
										L.	Misc expense	25 00	
											Chgo Theater	35 00	
May 12 SATURDAY	Chgo	New York	103 12	39 16				"	134 11	B.	Car expense	61 64	
											Laundry Exp	126 57	
										L.	Misc expense	25 00	
											Ticket expense	35 00	
										D.			
	TOTALS		1031	39 16					314 72			539 34	991 34

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I HEREBY CERTIFY THAT THE EXPENDITURES WERE MADE AS ABOVE STATED.

David Lubben
SIGNATURE OF TRAVELLER

CHARGE TO _____ DEPARTMENT

APPROVED BY _____ DEPARTMENT HEAD

AUDITED BY _____

REMARKS _____

ITINERARY OF MR. _____ WEEK ENDED _____ 19 _____

DATE	DAY	TOWN	HOTEL
	SUN.		
	MON.	Government Exhibit 167 Defendants Exhibit	Dep. Rec'd.
	TUE.	In the District Court of the United States, Northern District of Illinois, Eastern Division	OFFICE RATES
	WED.	No.	
	THU.	Roy E. Fuller - Official Court Reporter	
	FRI.		
	SAT.		

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GOVERNMENT EXHIBIT 175

General Commodities, Inc.
Schedule of Checks Drawn to Cash, and Other

Date	Check No.	Payee		Amount	Endorsed	Charged to Account	Information	
3/1/46	15	CASH		10000	Roy Hinderscheid	SUNDRIES - PETTY CASH	START PETTY CASH FUND	
"	16	"		67820	" "	PAYROLL CASH	CHECKED - CHARGED To PayRoll A/C	
3/8/46	36	"		178220	" "	(SUNDRIES) ACCTS PAY.	CASH PAID SOMBIS COCOA BUTTER @ 35¢ PER LB	
"	37	"		15000	R. NETWORK	SUNDRIES - PETTY CASH	PART OF PETTY CASH VOUCHERS FOR MARCH	c
3/9/46	45	"		113291	" "	PAYROLL CASH	CHECKED - CHARGED To Payroll A/C	
3/12/46	61	"		74962	FALCON STRUM	"	" " " "	
3/15/46	81	"		250000	" "	SUNDRIES	DEPOSIT ON PURCH 300 BAGS SUGAR - SHIPMENT 3/24 @ 24¢ PER LB - SEE CHK'S NO 109 & 123	
3/16/46		Myron J. North		100000	Myron I North Myron S North	ACCOUNTING -	CHECKED POSTING - CHARGES TO ACCOUNTING. CASH BOOKS MARKED CHARITY	
3/16/46	111	CASH		177833	FALCON STRUM	PAYROLL CASH	CHECKED To PAYROLL A/C	
3/21/46	112	"		3829	" "	PETTY CASH	REMAINDER OF PETTY CASH DEPOSIT FOR MARCH 8	
"	113X	DAVID LUBBEN	(1)	1000000	DAVID LUBBEN	LOANS RECEIVABLE	CHARGED To LOANS A/C - DAVID LUBBEN	
3/19/46	149	DAVID LUBBEN		3553600	DAVID LUBBEN	ACCTS PAYABLE	To Apply On Inventory Payable - Owed To Eastman	
3/13/46	11	OUR LADY OF BETHLEHEM ACADEMY		100000	Our Lady of Bethlehem Academy	- DONATION. - CHARITY -	CHARGED To DONATIONS	
3/25/46	108	DAVID LUBBEN		730000	DAVID LUBBEN	ACCTS PAYABLE	PURCHASE OF 75 PUNCHEONS CANE SYRUP - PAN AMERICAN CO.	
3/26/46	114	CASH		88135	ROY HINDERSCHEID	" "	" " OF 32 BBLS MOLASSES & 1 DRUM OIL - MID WESTERN CO.	
4/5/46	178X	DAVID LUBBEN	(2)	750000	DAVID LUBBEN	DAVID LUBBEN	CHARGED To DAVID LUBBEN - PERSONAL	
4/5/46	185	CASH		261166	FALCON STRUM	PAYROLL CASH	CHECKED To PAYROLL A/C	
4/8/46	241	CASH		950000	DAVID LUBBEN	PURCHASES		
4/9/46	249	DAVID LUBBEN	(3)	150000	DAVID LUBBEN	DAVID G. LUBBEN		
4/9/46	262	PAYROLL CASH		1933 44	FALCON STRUM	PAYROLL CASH	CHECKED To PAYROLL A/C	
4/11/46	278	CASH		175000	NONE	~~Furniture~~ PURCH	ENDORSEMENT READS CHECK ORDER To Eastman Co. Atl. Stenman - Executive CHECK VOID - 6-14	
4/13/46	310	PETTY CASH		25000	FALCON STRUM	SUNDRIES	PAY OF PETTY CASH VOUCHERS FOR APRIL	
4/9/46	320	CASH		600000	DAVID LUBBEN	ACCTS PAYABLE		
"	321	"		600000	" "	"		
"	322	DAVID G. LUBBEN	(4)	300000	DAVID G. LUBBEN	DAVID LUBBEN		
"	323	CASH		10000	FALCON STRUM	SELLING EXPENSE	CHARGED To SELLING EXPENSE	
4/20/46	369	PETTY CASH		25486	FALCON STRUM	SUNDRIES	PETTY CASH VOUCHERS APRIL	
4/20/46	370	PAYROLL CASH		358863	" "	PAYROLL	CHECKED To PAYROLL A/C	
"	375	DAVID LUBBEN	(5)	300000	DAVID LUBBEN	DAVID LUBBEN		
4/23/46	379	" "	(6)	300000	" "	DAVID LUBBEN		
"	384	CASH		10000	BERNARDINE MORROW	SELLING EXPENSE	TIPS FOR GIRLS @ TYSON - 1ST EACH	
4/24/46	453	CASH	(7)	950000	DAVID LUBBEN	DAVID LUBBEN	BALANCE DUE FOR PURCHASE OF SUGAR @ 24¢ BAG	c
"	454	CASH		720000	" "	ACCTS PAYABLE	" " " " " "	c
4/25/46	589	CASH		6853 47	DAVID LUBBEN - ENDORSED	ACCTS PAYABLE (VOUCHER)	THIS AMOUNT DUE AS PAYMENT TO C. - BALANCE ON HAND JANUARY 1945.	
"	590	CASH	(8)	200000	" "	DAVID LUBBEN	LOAN REPAID To URBAN	
4/26/46	396	CASH		230000	WM H HEITMAN - ENDORSED	ACCTS PAYABLE -	LIQUID SYRUP - 25 DRUMS.	
"	403	CASH		9000	H L STRAIN	SELLING EXPENSE	PLANE TICKET - SHUMWELL	
"	451	DAVID LUBBEN	(9)	200000	DAVID LUBBEN	DAVID LUBBEN		
4/30/46	455	PAYROLL CASH		383859	FRITZA STRUM	PAYROLL	CHECKED To PAYROLL A/C	
"	456	PETTY CASH	"	27986	" "	SUNDRIES	PETTY CASH APRIL	
5/1/46	470	CASH		230000	WM H HEITMAN - ENDORSED	ACCTS PAYABLE	25 DRUMS LIQUID SYRUP	
5/1/46	487	DAVID LUBBEN	(10)	300000	DAVID LUBBEN	SUNDRIES	DAVID G. LUBBEN SPECIAL A/C.	
5/6/46	247	CASH - CH GASSENBERG		118100	DAVID LUBBEN	ACCTS PAYABLE	PURCHASE 40 BAGS SUGAR. CHECK CASHED BY CH.	

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GOVERNMENT EXHIBIT 175A

GENERAL CONFECTIONS, INC.
SCHEDULE OF CHECKS DRAWN TO CASH AND OTHERS

Date	Check No.	Payee		Amount	Endorser	Charged to Acct	Information
5/3/46	495	PAYROLL CASH		379650	FRIEDA STRUM	PAYROLL	CHECKED TO PAYROLL A/C
5/10/46	561	PETTY CASH		32035	" "	SUNDRIES-P.C.	PETTY CASH DRAWN FOR MAY
"	568	PAYROLL CASH		394452	"	PAYROLL	CHECKED TO PAYROLL A/C
5/24/46	653	CASH		1200000	Roy HUNKENMEYER	ACCTS PAYABLE	50 BAGS SPEC. DONUT MIX (DETROIT BASE)
"	654	"		568319	" "	" "	250 BAGS SPEC. DONUT MIX (DETROIT BASE)
5/24/46	645	"		62300	S. MINASALA	"	PURCHASE 1-40 GAL. TWIN "MASUCAN" DEEP FAT FRYER
6/4/46	708	"	(11)	819184	DAVID LUBBEN-Roy HUNKENMEYER	DAVID G. LUBBEN	
"	713	"		500000	DAVID LUBBEN	ACCOUNTS PAYABLE	410 BAGS DO NUT MIX = 9840.00 - NET FACTORY
"	714	"		435500	"	"	AND STAMPS 10.00 - NET 9305.00
6/5/46	720	PAYROLL CASH		419145	FRIEDA STRUM	PAYROLL	CHECKED TO PAYROLL A/C
"	721	CASH		5000	" "	EXCHANGE	CHANGED TO EXCHANGE A/C
"	723	"		1200000	DAVID LUBBEN	ACCOUNTS PAYABLE	PURCHASE OF DONUT MIX ON BILL BY DAVID LUBBEN SE 137
"	746	" PAYROLL		713	FRIEDA STRUM	PAYROLL	CHECKED TO PAYROLL A/C
6/6/46	774	CASH		600000	DAVID LUBBEN-SOL. L. COHEN	ACCOUNTS PAYABLE	30 BAGS CHOCOLATE COATING - 20.00 PER BAG.
6/7/46	503	DAVID LUBBEN	(12)	200000	DAVID LUBBEN	DAVID LUBBEN	
6/4/46	806	CASH		319600	MICHAEL COHEN	ACCOUNTS PAYABLE	PURCHASE OF 200 BAGS SUGAR DEPOSITED BY MICHAEL COHEN IN MIDAS TRUST CO. SE 133
6/10/46	817	PAYROLL - CASH		411744	FRIEDA STRUM	PAYROLL	CHECKED TO PAYROLL A/C
"	818	PETTY CASH		5575	" "	PETTY CASH	PETTY CASH ITEMS FOR JUNE
6/18/46	906	DAVID LUBBEN		2700000	DAVID LUBBEN	ACCOUNTS PAYABLE	PURCHASES FROM SHERWELL - SEE PURCHASE BOOK AT PAGE
6/14/46	871	DAVID LUBBEN	(13)	1000000	" "	DAVID G. LUBBEN	
6/9/46	930	PETTY CASH		11669	FRIEDA STRUM	PETTY CASH	PETTY CASH ITEMS FOR JUNE
"	931	PAYROLL - CASH		391783	" "	PAYROLL	CHECKED TO PAYROLL A/C
"	944	CASH		230000	Roy HUNKENMEYER	ACCTS PAYABLE	PURCHASE 25 DRUMS LIQUID SYRUP
"	945	"		230000	"	ACCTS PAYABLE	PURCHASE 25 DRUMS LIQUID SYRUP
"	946	"	(14)	400000	DAVID LUBBEN	DAVID G. LUBBEN	
6/11/46	962	"		20000	Roy HUNKENMEYER	ACCTS PAYABLE	
"	963	"		50160	" "	ACCTS PAYABLE	
"	966	DAVID LUBBEN	(15)	500000	DAVID LUBBEN	DAVID LUBBEN	
6/[illegible]	0631	PAYROLL CASH		373177	FRIEDA STRUM	PAYROLL	CHECKED TO PAYROLL A/C
"	0632	PETTY CASH		15002	" "	PETTY CASH	PETTY CASH ITEMS FOR JUNE
"	0631	DAVID LUBBEN	(16)	300000	DAVID LUBBEN	DAVID G. LUBBEN	
6/8/46	881 905	M. COHEN - 25 CHECKS @ 10000 EACH		2500000	M. COHEN	LOAN PAYABLE	- CHECK NOS 881-905 CONFIRMATION 6/30/46
6/19/46	0639	DAVID LUBBEN	(17)	300000	DAVID LUBBEN	D. G. LUBBEN	- CONFIRMATION 6/30/46
"	0716	" "	(18)	2300000	" "	D. G. LUBBEN	" "
6/[illegible]	96[illegible]	CASH - L. ELSENBERG		172502	GENERAL CONFECTIONS	RE-TO PAYROLL	PURCHASE OF 9 DRUMS LIQUID SYRUP FOR MANUFACTURING
6/[illegible]	834	CASH		230000	DAVID LUBBEN	ACCTS PAYABLE	25 DRUMS SYRUP RAW MATERIAL
6/[illegible]	0641	"		163766	FRIEDA STRUM	PAYROLL	- CHECKED TO PAY ROLL CONTROL A/C.
6/[illegible]	0731	DAVID LUBBEN	(19)	150000	DAVID LUBBEN	DAVID LUBBEN	

General Conference

List of Checks - Requiring Additional Information

Date	Chk. No.	Payee	Account	Endorser	Charged To Account	Net Taxes	To Accounts Payable	Transferred
3/5/46	178	David Lubben	$ 125000	David Lubben	David Lubben			
3/5/46	241	Cash	150000	David Lubben	Payable 325			
4/4/46	249	David Lubben	150000	David Lubben	David Lubben			
4/15/46	330	Cash	600000	David Lubben	Accounts Payable		600000	
"	331	Cash	600000	David Lubben	Accounts Payable		600000	
"	332	David G. Lubben	500000	David Lubben	David Lubben			50000
4/24/46	375	David Lubben	300000	David Lubben	David Lubben			30000
4/25/46	379	David Lubben	300000	David Lubben	David Lubben			300000
4/30/46	451	David Lubben	200000	David Lubben	David Lubben			200000
5/5/46	487	David Lubben	300000	David Lubben	Summons - D.G. Lubben Sp. A.			300000
5/7/46	708	Cash	819184	David G. Lubben - Pay	David G. Lubben	819184		
5/6/46	743	Cash	120000	David G. Lubben	Accounts Payable		120000	
4/30/46	303	David Lubben	200000	David Lubben	David Lubben			20000
4/30/46	906	David Lubben	2700000	David Lubben	Accounts Payable		2700000	
4/30/46	877	David Lubben	1000000	David Lubben	David Lubben			1000000
4/29/46	996	Cash	900000	David Lubben	David Lubben			900000
4/30/46	962	Cash	20000	Roy Hawkinson	Accounts Payable		20000	
"	963	Cash	50160	Roy Hawkinson	Accounts Payable		50160	
"	966	David Lubben	350000	David Lubben	David Lubben			350000
4/25/46	0837	David Lubben	300000	David Lubben	David Lubben			300000
4/8/46	0839	David Lubben	50000	David Lubben	David Lubben			50000
5/16	0916	David Lubben	2300000	David Lubben	David Lubben			2300000
"	0731	David Lubben	150000	David Lubben	David Lubben			150000
			12513344			819184	4090160	14010000

Post to Tax Ledger

$ 3377.0

GENERAL CONFECTIONS INC
SCHEDULE OF CHECKS DRAWN TO CASH AND OTHERS
JULY - OCT 1946

DATE	CHECK NO	PAYEE	AMOUNT	ENDORSER	CHARGED TO ACCT	INFORMATION
9/14	1100	PAYROLL	137633		PAYROLL	CHECKED TO PAYROLL A/C
	1101	"	271303		"	CHECKED TO PAYROLL A/C
	1102	DAVID LUBBEN	200000	DAVID LUBBEN	D LUBBEN-SPECIAL	
9/16	1127	ROY HANKERMEYER	1369	ROY HANKERMEYER	ACCTS PAYABLE	EXPENSE ACCT WEEK ENDED [illegible]
9/19	1133	CASH	5000	ROY HANKERMEYER	PETTY CASH	
9/20	1138	PAYROLL	126750		PAYROLL	CHECKED TO PAYROLL A/C
	1148	"	284194		"	CHECKED TO PAYROLL A/C
9/21	1153	CASH	120000	IRVING CARREY	ACCTS PAYABLE	FOR DEXTROSE JE [illegible]
	1156	"	7100	W L BEATTIE	POSTAGE	
9/22	1165	"	125000	ROY HANKERMEYER CORNELIUS O'SHEA	ACCTS PAYABLE	12½ DRUMS LIQUID SYRUP
9/23	1177	"	190000	DAVID LUBBEN	" "	COMM TO AF MOGRATH RE [illegible]
	1179	D G LUBBEN	300000	" "	D LUBBEN SPECIAL	
9/26	1183	PETTY CASH	11766	ROY HANKERMEYER W L BEATTIE	PETTY CASH	
	1184	CASH	5306	ROY HANKERMEYER W L BEATTIE	" "	
9/27	1212	DAVID LUBBEN	100000	DAVID LUBBEN	D G LUBBEN-SPECIAL	TO COVER CHECK ISSUED TO [illegible]
	1213	CASH	250000	ROY HANKERMEYER	ACCTS PAYABLE	PURCHASE OF 25 DRUMS LIQUID [illegible]
	1214	"	112500	" "	" "	10½ DRUMS LIQUID [illegible]
	1215	"	35000	" "	" "	LEGAL EXPENSE - GARY STORM
	1216	"	20000	" "	" "	LEGAL EXPENSE - SAM DAVIDSON
	1217	"	270500	" "	" "	FOR DEXTROSE JE 134
	1218	PAYROLL	275444		PAYROLL	CHECKED TO PAYROLL A/C
	1219	CASH	336000	CORNELIUS O'SHEA	ACCTS PAYABLE	FOR DEXTROSE JE 134
	1220	"	120000 OUT		" "	12½ DRUMS LIQUID SYRUP
9/28	1228	DAVID LUBBEN	50000	DAVID LUBBEN	D G LUBBEN-SPECIAL	
9/30	1236	PAYROLL	186382		PAYROLL	CHECKED TO PAYROLL A/C
9/29	1237	A G HARMEIER CASH	750000	A G HARMEIER DAVID LUBBEN	ACCTS PAYABLE ACCTS PAYABLE	EXPENSES WEEKS ENDED [illegible] PART PAYMT ON MOLE [illegible]
9/3	1240	"	200000	FRIEDA STRUM	" "	COMMISSIONS PAID BY D G LUBBEN [illegible] JE [illegible]
	1247	PAYROLL	283471		PAYROLL	CHECKED TO PAYROLL A/C
	1265	MIKE COHEN	740000	MICHAEL COHEN	ACCTS PAYABLE	FOR 400 BAGS DEXTROSE PURCHASED JE [illegible]
	1282	PAYROLL	128383		PAYROLL	CHECKED TO PAYROLL A/C
	1285	A.G. HARMEIER	13563	A G HARMEIER	ACCTS PAYABLE	EXPENSE ACCT WEEK ENDED [illegible]
	1286	"	10538	" "	" "	EXPENSE ACCT WEEK ENDED [illegible]
	1287	CASH	1000000	IRVING CARREY	" "	200 DRUMS LIQUID SYRUP BEING [illegible]
	1288	"	1000000	" "	" "	FOR NOT CHURCH @ 41 [illegible]
	1306	PAYROLL	236957		PAYROLL	CHECKED TO PAYROLL A/C
	1314	CASH	77000	DAVID LUBBEN	ACCTS PAYABLE	COMMISSIONS PAID TO [illegible] JE 89
	1321	PETTY CASH	5743	W L BEATTIE	PETTY CASH	
	1339	PAYROLL	131257		PAYROLL	CHECKED TO PAYROLL A/C
	1342	CASH	7600	W L BEATTIE	POSTAGE	
	1343	"	5665	" "	PETTY CASH	
	1356	"	6000	ADAM P LA SOTA	GENERAL MISC OFFICE EXP	PLANT TO EXPENSES
	1377	A.G. HARMEIER	12705	A G HARMEIER	ACCTS PAYABLE	EXPENSE ACCT WEEK ENDED [illegible]
	1382	PAYROLL	280651		PAYROLL	CHECKED TO PAYROLL A/C

GOVERNMENT EXHIBIT 177I

(See Opposite) ☞

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[fol. 142]

GOVERNMENT EXHIBIT 178

GENERAL CONFECTIONS INC

SCHEDULE OF CHECKS DRAWN TO CASH AND OTHERS

NOV 1946 TO FEB 28, 1947 INCL

DATE	CHECK NO	PAYEE	AMOUNT	ENDORSED	CHARGED TO ACCOUNT	DETAILS	
11/1	1502	CASH - BRUCKERMAN	1000 00	DAVID G LUBBEN	ACCTS PAYABLE	CHARGED TO BRUCKERMAN -	✓
	1503	"	500 00	D.G. LUBBEN - BRUCKERMAN	" "	CHARGED TO BRUCKERMAN -	✓
	1504	"	2000 00	D G LUBBEN - (LUBBEN)	" "	CHARGED TO BRUCKERMAN	✓
11/4	1505	M CHAEL COHEN	4500 00	MICHAEL COHEN	EXCHANGE	OFFSET ACCT 4500 IN EXCHANGE A/C	✓
	1509	SADDLE RIVER FARMS D G LUBBEN	100000 ✓ 500 00	SADDLE RIVER FARMS DEPOSITED LUBBEN A/C NYC	ACCOUNTS PAYABLE D G LUBBEN - SPECIAL	ADVANCE CHARGED D.G.L. PERSONAL	✓
11/7	1622	D.G. LUBBEN	100000	DAVID G LUBBEN	" " "	" " "	
11/10		CASH - BRUCKERMAN	5000 00	D G LUBBEN (CASH)	ACCTS PAYABLE	CHARGED TO BRUCKERMAN -	✓
11/12	1675	CASH - SWEETHEART PROD	7483 00	D G LUBBEN - SWEETHEART	" "	* FOR MINTS	
	1676	" " "	10 00 00	" " "	" "	* FOR MINTS	
11/14		SADDLE RIVER FARMS	15000 ✓	SADDLE RIVER FARMS	" "	ADVANCE	
11/14	1683	D G LUBBEN	1000 00	DEPOSITED LUBBEN A/C NYC	D G LUBBEN - SPECIAL	P.G.L. PERSONAL	✓
11/15	1711	SADDLE RIVER FARMS	11650 ✓	SADDLE RIVER FARMS,	ACCTS PAYABLE	CHARGED TO SADDLE RIVER FARMS A/C	✓
11/19	1718	CASH (MARKING PRODUCTS)	360 00	B NORRIS	" "	CASH PURCHASES - DEXTROSE - P. 77 - 30.	
	1719	CASH	200 00	B NORRIS	" "	PERMIT TO ARRANGE FOR OBTAINING RAW MATERIALS	
11/27	1813	CASH (SUCARCAN)	5000 00	D G LUBBEN - SWEETHEART	" "	* FOR MINTS	
11/30		(CASH) PORTFOLIO	2000 00	DAVID G LUBBEN	D G LUBBEN SPECIAL	CHARGED TO P G L PERSONAL	✓
		SADDLE RIVER FARMS INC	1500 00 ✓	SADDLE RIVER FARMS INC	ACCTS PAYABLE	LOAN TO FARM	
12/2	1813	CASH "BUCKWAY"	5933 28	D G LUBBEN - SWEETHEART	" "	* FOR MINTS	
	1866	M CHAEL COHEN	4500 00	MICHAEL COHEN	" "	300 BAGS (100 LBS EA) DEXTROSE	
	1867	" " "	4180 00	" " "	" "	19 BAGS (100 LBS EA) DEXTROSE	
12/3	1868	" " "	4500 00	" " "	" "	300 BAGS (100 LBS EA) DEXTROSE	
		CASH BRUCKERMAN	4253 00	DAVID G LUBBEN	" "	CHARGED TO BRUCKERMAN	
12/4			4664 44	" " "	" "	CHARGED TO BRUCKERMAN	
12/6	1954	M CHAEL COHEN	4500 00	MICHAEL COHEN	" "	300 BAGS (100 LBS EA) DEXTROSE	
	1955	" " "	1250 00	" " "	" "	COMMISSION ON PURCHASE OF DEXTROSE	
12/9	1959	CASH	1590 00	DAVID G LUBBEN -	" "	PURCHASE 60 BAGS DEXTROSE - CASH PURCHASE	✓
	1960	"	9363 00	" " "	" "	PURCHASE 381 BAGS + 12 DEXTROSE	✓
12/10	1996	SWEETHEART PRODUCTS	4236 77	SWEETHEART PRODUCTS INC	" "	CHGD SWEETHEART 4236.77 P Reg #'s 1863-3 Inv. Copy #'s P 4398 SC	
	1997	"	2000 00	DG LUBBEN, CORRECTION CHECK	D G LUBBEN - SPECIAL	P D G L Special a/c. SEE Ruling #10 P G L A/C	✓
12/	2001	DAVID G LUBBEN	5000 00	DEPOSITED LUBBEN A/C NYC	" " "	" " " " " "	✓
	2029	D G LUBBEN	1000 00	" " " "	" " "	" " " " " "	✓
	2035	" "	1000 00	" " " "	" " "	" " " " " "	✓
12/19		SADDLE RIVER FARMS	17500 ✓	SADDLE RIVER FARMS	ACCTS PAYABLE	CHARGED TO SADDLE RIVER FARMS A/C	✓
12/1	2069	M CHAEL COHEN	4500 00	MICHAEL COHEN	" "	300 BAGS (100 LBS EA) DEXTROSE	
12/16	2087	M COHEN	4500 00	" " "	" "	300 BAGS (100 LBS EA) DEXTROSE	
12/17	2109	SADDLE RIVER FARMS (SYLVIA GLEASON)	800 00	SYLVIA GLEASON	" "	CHARGED TO SADDLE RIVER FARMS A/C	
12/18	2120	CASH	565 00	SOL HANKERMEYER	" "	227 BAGS (100 LBS EA) DEXTROSE	
12/24	2172	CASH	2500 ✓	" "	D G LUBBEN SPECIAL	CHGD P G L SPEC. A/C 3RD RULING #13	✓
12/		SADDLE RIVER FARMS	7500 00	SADDLE RIVER FARMS INC	ACCTS PAYABLE	CHARGED TO SADDLE RIVER FARMS A/C	✓
12/		" " "	1500 00	" " " "	" "	"	✓
12/		"	7000	" " " "	" "	"	✓
12/		"	13710 00	" " " "	SADDLE RIVER	"	✓
12/		CASH	1000 00	DG LUBBEN, TRAVEL EXPNS	D G LUBBEN - SPECIAL	P G L A/C	✓

[fol. 143]

GOVERNMENT EXHIBIT 178A

GENERAL CONFECTIONS, INC
SCHEDULE OF CHECKS DRAWN TO CASH AND OTHERS
NOV 1946 TO FEB 28, 1947 INCL

(2)

DATE	CHECK NO	PAYEE	AMOUNT	ENDORSER	CHARGED TO ACCOUNT	DETAILS
10/26	23 05	MICHAEL COHEN	1125 18	MICHAEL COHEN	ACCOUNTS PAYABLE	5,388 LBS DEXTROSE
1/13	21 76	CASH - EXCHANGE	2500 00	DAVID LUBBEN - YETTA STONE	EXCHANGE	OFFSET TO H WEISMANN IN LOANS & FUEL A/C ✓
	21 77	" "	2500 00	" "	"	" " " " " " " ✓
1/15	22 31	CASH	100 00	BERNADINE MARQUIS	ACCTS PAYABLE	XMAS PRESENTS FOR GIRLS AT TYSONS
1/17		SADDLE RIVER FARMS, INC	250 00	SADDLE RIVER FARMS	SADDLE RIVER	CHARGED TO SADDLE RIVER FARMS A/C ✓
2/3	23 99	CASH	2500 00	DAVID LUBBEN	ACCTS PAYABLE	DRUCKERMAN CHARGED ✓
2/17		SADDLE RIVER FARMS INC	600 00	SADDLE RIVER FARMS	SADDLE RIVER FARMS	CHARGED TO SADDLE RIVER FARMS A/C ✓

* ABOVE 4 PAYMENTS WERE FOR PURCHASE OF FOLLOWING CHARGED TO WAREHOUSE SHIPMENTS

429 CASES MOTS @ 60 LBS - 25,740 LBS @ 44¢			11 325 60
1484 " " @ 32 LBS - 47,488	@ 36¢		17 095 68
			28 421 28

Col 144

Government Exhibit 185

20 months @ 3000 — 60000

1945 Recd 204100

Choc & [illegible]	000	
Milk 10 mo	30 000	
Corn Syrup	12,000	
Cocoa Bean deal	90.000	
Sugar deal	37.000	
Cocoa bean	22000	
Sales Exp	18.000	
		194.000
Carry over		10100
	1946	168600
		178600
Corn Syrup	57775	
Milk	15.000	
Sugar	54825	178.600
Sales Exp	21 000	

- 338.76 to balance

ACCOUNTS RECEIVABLE

Sales, 11/9/44 - 12/31/44 (Price adjustment)			
Less, corrections, invoices		$ 29,837.00	
#54263, shown $ 5,401.00 should be	$ 1,080.20		
54388, " 5,632.00	1,126.40		
$11,033.00	$ 2,206.60	8,826.40	
Net sales, 1944			$ 21,010.60
Collections, 1944			11,700.00
Balance due, 12/31/44			9,310.60
Sales, 1945: (Price adjustment)			
1/1/45 - 5/31/45		91,495.50	
6/7/45 - 11/28/45 (Unverified approximation)		85,786.30	
11/28/45 - 12/31/45		26,823.30	204,105.10
Collections, 1945			213,415.70
Balance due, 12/31/45			198,429.84
			14,985.86
Sales, 1946:			
Price adjustments	$135,923.80		
Unbilled shipments	65,734.64	201,658.44	
Less, items uncollected due to financial difficulties		48,614.90	
Net sales, 1946			153,043.54
Collections, 1946			168,029.40
Balance due, 12/31/46			168,029.40
			$ -o-

CASH ACCOUNT

	1944	1945	1946
RECEIPTS (Collections)			
Balance forwarded	$ 11,700.00	$198,429.84	$168,029.40
	-o-	11,700.00	16,129.84
	11,700.00	210,129.84	184,159.24
DISBURSEMENTS:			
Chocolate		45,000.00	-o-
Milk		30,000.00	15,000.00
Corn syrup		12,000.00	87,775.00
Cocoa beans		22,000.00	-o-
Cocoa bean deal		30,000.00	-o-
Sugar deal		37,000.00	54,825.00
Sales expenses and unallocated		18,000.00	20,661.24
TOTAL DISBURSEMENTS	-o-	194,000.00	178,261.24
CASH BALANCE	$ 11,700.00	$ 16,129.84	5,898.00
DEPOSITED IN BANK 7/25/46			$ 5,898.00

[fol. 145]

GOVERNMENT EXHIBIT 186

[fol. 146]

GOVERNMENT EXHIBIT 187

CLASS OF SERVICE

This is a full-rate Telegram or Cablegram unless its deferred character is indicated by a suitable symbol above or preceding the address.

WESTERN UNION

JOSEPH L. EGAN
PRESIDENT

1201

SYMBOLS

DL = Day Letter
NL = Night Letter
LC = Deferred Cable
NLT = Cable Night Letter
Ship Radiogram

The filing time shown in the date line on telegrams and day letters is STANDARD TIME at point of origin. Time of receipt is STANDARD TIME at point of destination

N171 SER PD=WUX CHICAGO ILL 8 230P=

MR TOBIAS=

1533 JESUP AVE TRE 2 6394=

187

TELEPHONE TREMONT 2-6394 ARRIVING GOTHAM HOTEL ONE P.M. TOMORROW 7-9-48 WOULD LIKE TO SEE YOU ABOUT FIVE P.M.=

S A CAIN=

52-1V3

2-6394 PM 7-9-48 PM=

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM THE PUBLIC CONCERNING ITS SERVICE

[fol. 147]

GOVERNMENT EXHIBIT 188A

5/27

Caller	Agent
Garrell	J. R. Murphy
[illegible] (Inf.)	Walters (Cafe in Buffy's
Fernekees	Shindler
Conlon	W. P. Murphy
Filfus (Inf.)	Walters (Boyle)
Mintz	Walters
Lischner	W. P. Murphy
Ehrlich	Doberman

5/28

Neville	W. P. Murphy
Wm Shepard	Hogan

6/1

Mr. King (new Stmr)	W. P. Murphy
Davis	Bulson
Massera	W. P. Murphy
Arlan	Bolich
Sherman	Bolich
Grace	Bolich

[fol. 148]

GOVERNMENT EXHIBIT 188B

6/25

Caller	Agent
Austin Smith	Basadel
Adler	Weiss

6/28

Silke	Walters
Katz (Inf.)	Santry
Grace	Bolich
O'Leary	Bolich
Greenberg	Murphy
Seader (Inf.)	Santry
McDonald	Boyle

6/29

Holland	Cahill
Fellerman }	Basadel
Friedman }	
Martin (A.I.U., W.P.	Murphy
Gerhardt	Basadel
Epstein	Bolich
Mrs. Fitzgibbon (Inf.)	Shindler

[fol. 149]

GOVERNMENT EXHIBIT 188C

7/9 (cont'd)

Caller	Agent
Tobins	Tuohig
Kandell	Walters
Artie Sholp	W.P. Murphy
Bullen (customer)	W.P. Murphy

7/12

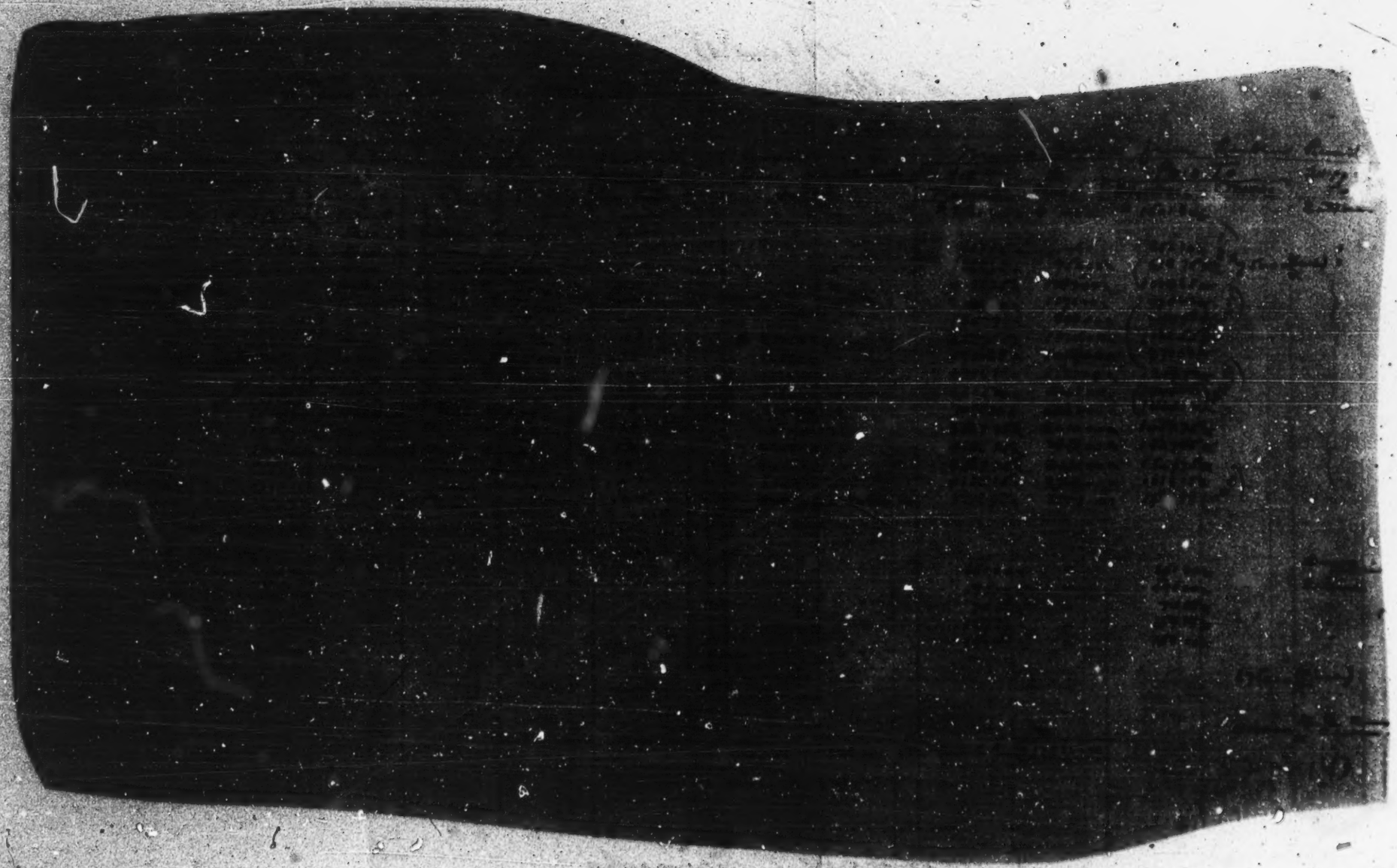
Mr. Grace	Bolich
Mr. Kane	Bolich
Mr. Solson	Tuohig
Cavalo	Clare
Mr. Isaacs	W.P. Murphy
Kazor	Weiss

7/13

(Deputy Collector-Heart Attack) Bischoff	Karash
Lyons	Tuohig
Hoffman	Bolich
Putterman	Chandler
Maust	Schutzman
Hoffman	Kennedy

[fol. 150]

GOVERNMENT EXHIBIT 189A



ANALYSIS OF TRANSACTIONS BETWEEN
SHOTWELL AND DAVE LUBIN, (GEN COMR, PHILS.)
1945

Sales as recorded on Shotwell Records

Invoice No.	Date	Invoice Amount	Net Weight	Shotwell Invoiced PER L.B.	Computations per Adjuster	Mine Records	Mine Records No. Acres	From Lubin Records Paid	To	Invoices No.
C. 65058	1/5	# 3[illegible]09	30500	[illegible]	3456 00	617700	2[illegible]00	7897.06		[illegible]
61904	1/6	1[illegible]85	17[illegible]	[illegible]	173.00	3[illegible]08	174[illegible]	1[illegible]8.41		
61[illegible]	1/6	1[illegible]30	15[illegible]	[illegible]	1[illegible]00	278130	15[illegible]	123730		
59931	1/8	1[illegible]34	13[illegible]	[illegible]	1[illegible]00	2[illegible]83	13[illegible]	1[illegible]63.[illegible]		
63530	1/10	1[illegible]38	15[illegible]	[illegible]	1[illegible]00	287[illegible]38	157[illegible]	129911		
61[illegible]	1/10	1[illegible]900	18[illegible]	[illegible]	1[illegible]00	7[illegible]87[illegible]	158[illegible]	1[illegible]87.[illegible]		
66013	1/19	1[illegible]75	16500	[illegible]	1[illegible]00	2[illegible]18[illegible]5	1[illegible]00	1[illegible]78.75		
61[illegible]	1/[illegible]	1[illegible]45	13[illegible]	[illegible]	1[illegible]00	2[illegible]8[illegible]45	1[illegible]98[illegible]	108[illegible]3		
61[illegible]	1/[illegible]	1[illegible]63	13[illegible]	[illegible]	1[illegible]00	2[illegible]69[illegible]3	1[illegible]35[illegible]	101[illegible]63		
70[illegible]	1/[illegible]	1[illegible]83	14[illegible]	[illegible]	1[illegible]00	[illegible]5[illegible]83	1[illegible]00	1[illegible]5[illegible]3		
70[illegible]	1/[illegible]	1[illegible]900	13900	[illegible]	1[illegible]00	2[illegible]00 00	13[illegible]	1[illegible]89.00		
70[illegible]	1/[illegible]	1[illegible]500	15000	[illegible]	1[illegible]00	3[illegible]85 00	18[illegible]	1[illegible]85.00		
70[illegible]	1/[illegible]	1[illegible]038	[illegible]	[illegible]	1[illegible]00	2[illegible]6[illegible]38	1[illegible]500	120[illegible]18		
71[illegible]	1/[illegible]	1[illegible]85	[illegible]	[illegible]	1[illegible]00	2[illegible]77[illegible]	1[illegible]67[illegible]	121[illegible]8		
71501	1/[illegible]	1[illegible]973	[illegible]90	[illegible]	1[illegible]00	2[illegible]78[illegible]3	1[illegible]49[illegible]	1[illegible]9973		
71778	1/[illegible]	1[illegible]68	[illegible]378	[illegible]	1[illegible]00	2[illegible]60[illegible]8	1[illegible]3700	111368		
7310[illegible]	1/[illegible]	8[illegible]5[illegible]	[illegible]670	[illegible]	1[illegible]00	8[illegible]15[illegible]8	[illegible]67[illegible]	3[illegible]6539		
73408	1/[illegible]	1[illegible]65	[illegible]6[illegible]	[illegible]	1[illegible]00	[illegible]6[illegible]8	1[illegible]66[illegible]	11[illegible]65		
74510	1/[illegible]	1[illegible]35[illegible]	[illegible]6[illegible]	[illegible]	1[illegible]00	2[illegible]7[illegible]55	1[illegible]48[illegible]	123[illegible]55		
74[illegible]	1/[illegible]	1[illegible]365	[illegible]378	[illegible]	1[illegible]00	2[illegible]55068	1[illegible]487[illegible]	111368		
74[illegible]	1/[illegible]	1[illegible]365	[illegible]370	[illegible]	1[illegible]00	2[illegible]55068	1[illegible]487[illegible]	111368		
76[illegible]	1/[illegible]	1[illegible]530	[illegible]480	[illegible]	1[illegible]00	2[illegible]55068	1[illegible]487[illegible]	111368		
77136	1/[illegible]	1[illegible]20	7[illegible]6	[illegible]	1[illegible]00	2[illegible]64[illegible]0	1[illegible]488[illegible]	115[illegible]0		
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77[illegible]	1/[illegible]	2[illegible]600	[illegible]400	[illegible]	1[illegible]00	2[illegible]53[illegible]46	1[illegible]386[illegible]	1[illegible]34[illegible]		
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78[illegible]	1/[illegible]	1[illegible]3[illegible]8	[illegible]6[illegible]	[illegible]	1[illegible]00	[illegible]0[illegible]5[illegible]	1[illegible]68[illegible]	[illegible]58[illegible]6		
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7[illegible]5[illegible]	1/[illegible]	1[illegible]3[illegible]03	14[illegible]0	[illegible]	1[illegible]00	1[illegible]68[illegible]5[illegible]	5[illegible]8[illegible]00	11[illegible]0000		45th Ave
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[illegible]	1/[illegible]	1[illegible]9[illegible]5[illegible]	[illegible]3[illegible]8	[illegible]	1[illegible]00	[illegible]89[illegible]14	216000	3[illegible]9[illegible]0[illegible]		
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[illegible]	1/[illegible]	1[illegible]8[illegible]0[illegible]	[illegible]4[illegible]0	[illegible]	1[illegible]00	[illegible]5[illegible]10[illegible]9[illegible]	18[illegible]00	3[illegible]6[illegible]0[illegible]		3. C
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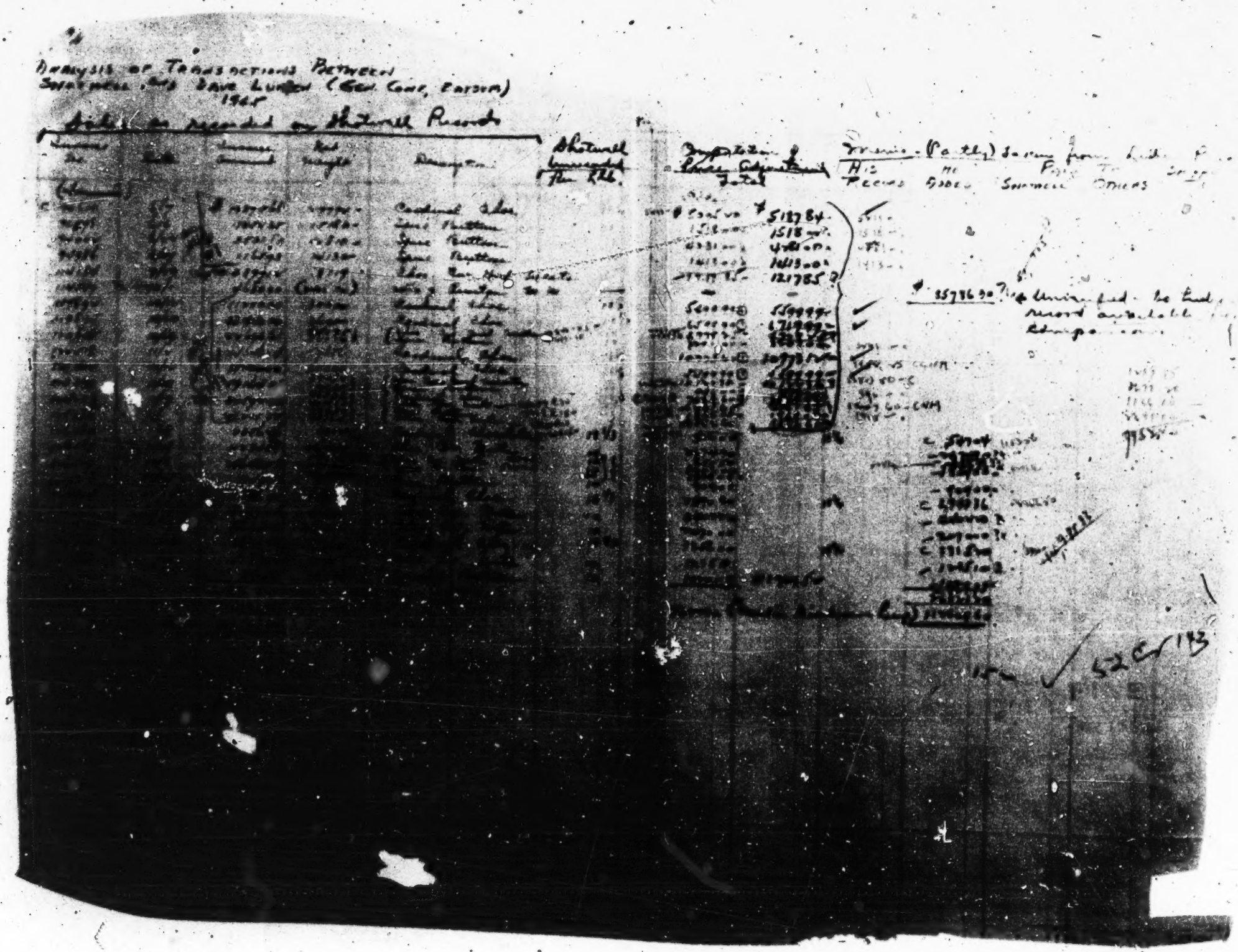
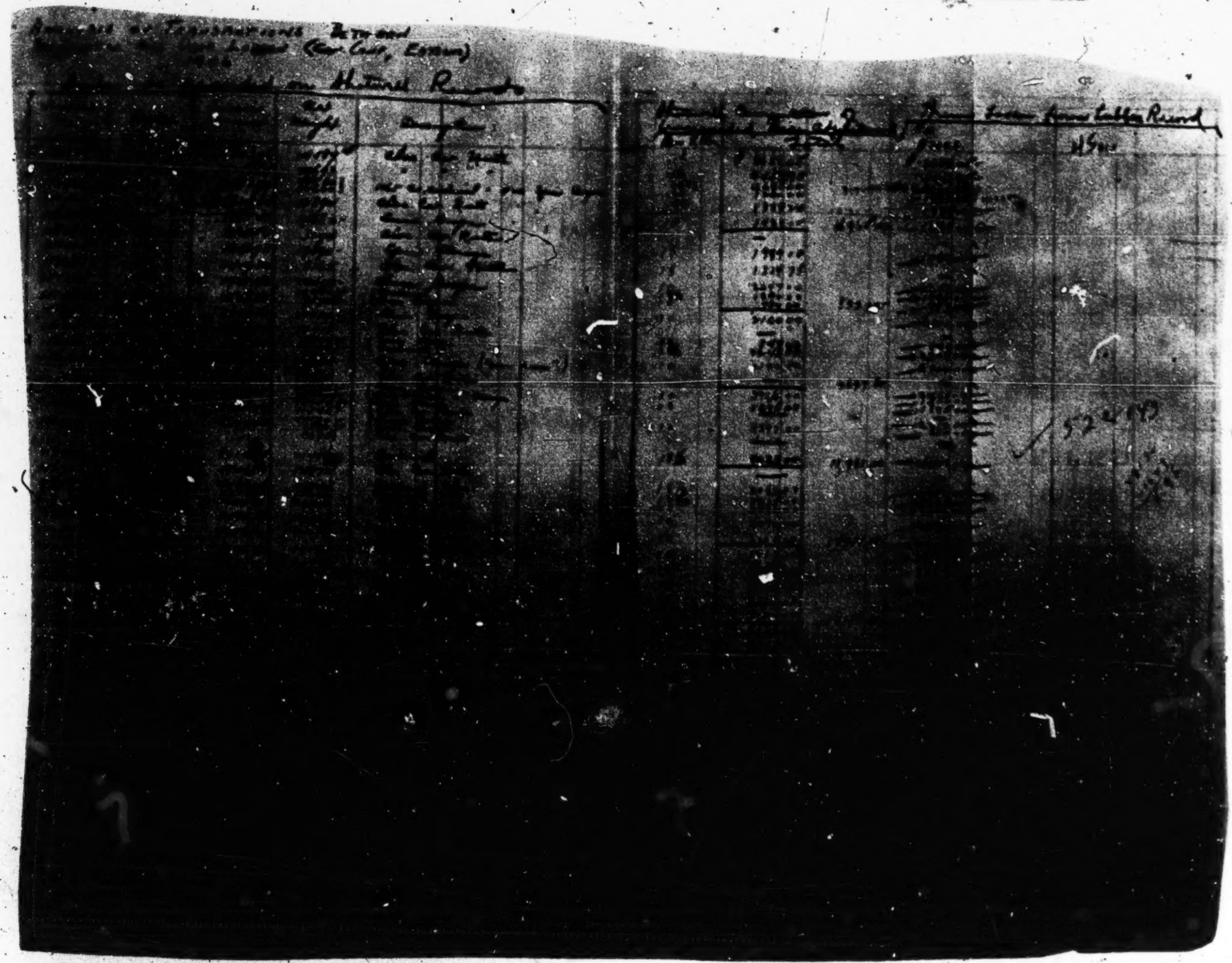
[fol. 152]

GOVERNMENT EXHIBIT 189C



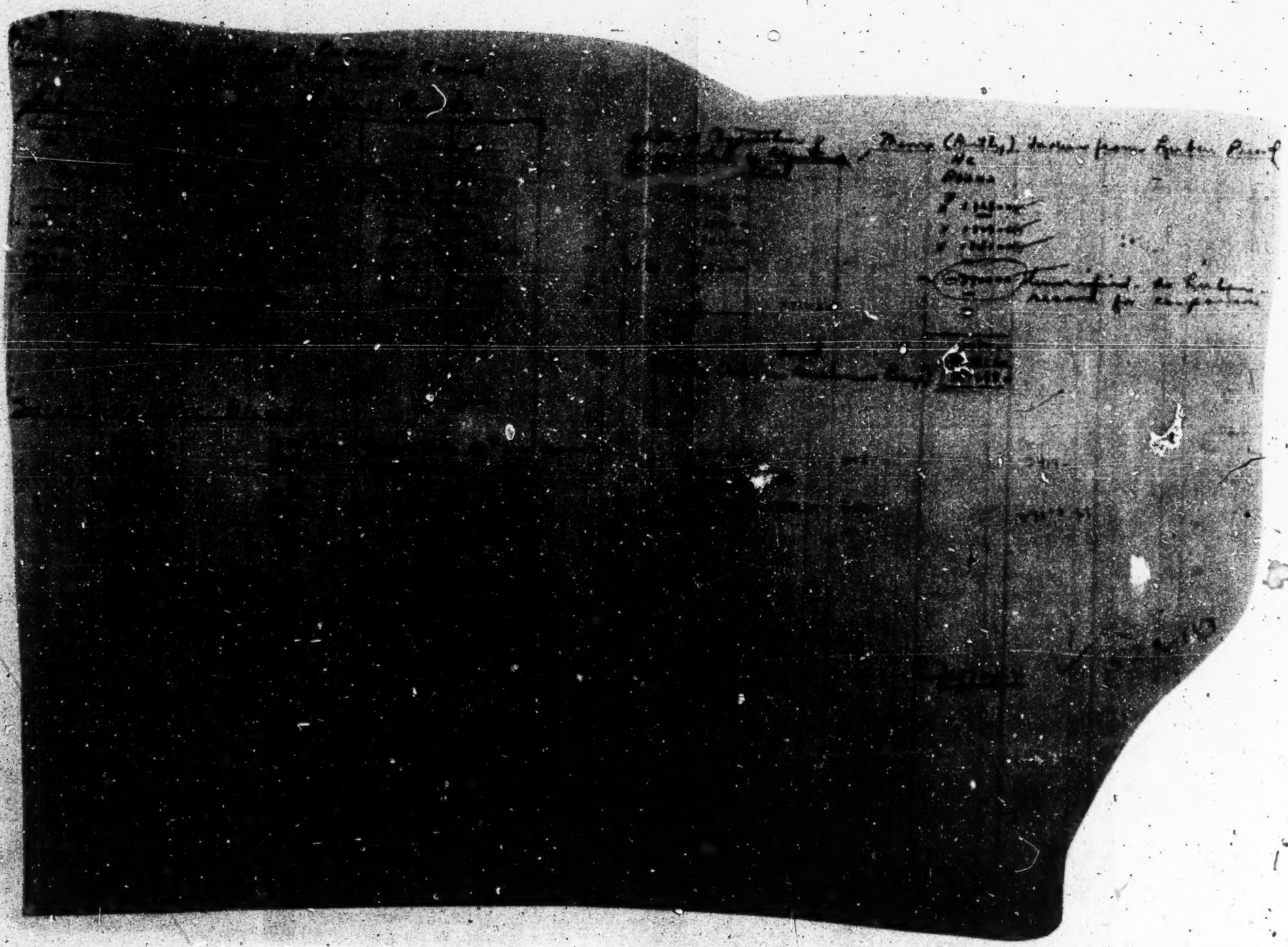
[fol. 153]

GOVERNMENT EXHIBIT 189D



[fol. 154]

GOVERNMENT EXHIBIT 189E



SHOTWELL MF

Roy E. Fuller - Director

	MAY 28			
	MAY 28			
1501.30	MAY 28		850.00 -	1501.30 *
651.30	JUN 16 CSH		651.30 -	.00 *
	AUG 12	651.30		651.30 *
651.30	AUG 21 CS		651.30 -	.00 *
	NOV 6	1578.75		
	NOV 13	2485.85		1143.40
1143.40	NOV 17	970.20		
	NOV 16	744.95		2358.58 *
3358.58	NOV 20	1133.35		
	NOV 22	873.95		5365.91 *
5365.91	NOV 27 CSH		1143.40 -	3722.41 *
3722.41	NOV 25	1259.75		
	NOV 27	1404.20		6386.45 *
6386.45	NOV 30	1464.32		7850.77 *
7850.77	DEC 6	1557.75		9409.52 *
9409.52	DEC 4 CSH		2750.00 -	5659.52 *
5659.52	DEC 8	1827.15		
	DEC 9	1575.75		
	DEC 12	1815.15		10898.94 *
10898.94	DEC 11 CSH		1150.75 -	9748.19 *
5029.50	DEC 26	1578.75		11327.69 *
11327.69	DEC 20 CSH		2156.50 -	9171.19 *
9349.05	DEC 26 CSH		3582.00 -	5589.19 *
4963.33	DEC 29 CSH		1546.75 -	4042.58 *
		1945		
2406.13	JAN 5			1036.20 *
1036.20	JAN 2 CSH		4816.15 -	3779.95 *
4239.98	JAN 12			
	JAN 10			7019.93 *
	JAN 15			2779.73 *
8076.56	JAN 15 CSH		4296.20 -	4723.53 *
3791.71	JAN 19			
	JAN 20			2750.00 *
6779.09	JAN 24 CSH		4353.50 -	5146.59 *
5120.79	JAN 30			3396.84 *
6399.54	JAN 29 CSH		5120.79 -	1278.75 *
1278.75	FEB 2	1083.45		2362.20 *
2362.20	FEB 8	1034.63		3396.83 *
3396.83	FEB 12 CSH		2362.20 -	1034.63 *
1034.63	FEB 16	1155.83		2190.46
90.46	FEB 21	1089.00		3279.4

Ex Form

Fed 1561

GOVERNMENT EXHIBIT 200

127

SHOTWELL MFG CO

17 Richardson St

Brooklyn, New York

- 1945

Bal. Forward			
3,279.46	FEB 22	1,485.00	
	FEB 23	1,200.38	
7,175.12	FEB 24	1,210.28	
8,274.85	FEB 26	1,099.73	
9,386.53	MAR 1	1,113.68	
7,198.07	MAR 1		2,190.46 —
10,883.35	MAR 8	3,085.28	
12,004.00	MAR 13	1,120.55	
13,236.55	MAR 14	2,325.55	
8,251.89	MAR 19 CSH		4,984.56 —
9,365.57	MAR 21	1,113.68	
1,113.68	MAR 23 CSH		8,251.89 —
2,227.36	MAR 23	1,113.68	
3,380.56	MAR 28	1,153.20	
2,266.98	APR 5 CSH		1,113.68 —
	APR 4	1,006.20 —	
	APR 4	1,225.13	
13,566.95	APR 5	1,143.46	
12,413.75	APR 5	2,016.00 —	
	APR 6	3,520.12 —	
	APR 7	2,389.16 —	
	APR 9 CSH		1,153.20 —
	APR 10	1,336.30 —	
	APR 11	2,683.00 —	
	APR 12	1,043.93 —	
	APR 14	1,120.00 —	
	APR 11	1,235.03 —	
29,917.21	APR 13 CSH		3,482.27 —
26,434.94	APR 21	2,801.34	
	APR 20	2,729.37	
	APR 20	1,200.00	
43,164.85	APR 20 CSH		1,523.94 —
	APR 24 CSH		1,120.00 —
16,729.91	APR 27	3,601.92	
	APR 24	1,546.08 —	
	APR 28	1,182.72	
23,060.53	MAY 4	1,976.54	
	MAY 2	2,867.20	
	MAY 3	2,436.36	
	MAY 3	3,140.44	
32,481.77	MAY 2 CSH		1,400.34 —
	MAY 2 CSH		2,729.37 —
15,751.36	MAY 9	1,080.53	
16,432.19	MAY 7 CSH		1,546.08 —
	MAY 9 CSH		3,601.92 —
	MAY 9 CSH		1,182.72 —
01.77	MAY 7 CSH		5,421.14 —

7,175.12 *	
8,274.85 *	
9,386.53 *	
7,198.07 *	
10,883.35 *	
12,004.00 *	
13,236.55 *	
8,251.89 *	
9,365.57 *	
1,113.68 *	
2,227.36 *	
3,380.56 *	
2,266.98 *	
13,566.95 *	
12,413.75 *	
29,917.21 *	
26,434.94 *	
43,164.85 *	
16,729.91 *	
23,060.53 *	
32,481.77 *	
15,751.36 *	
16,432.19 *	
1,010.77 *	
080.53 *	

SHOTWELL MFG CO

Latsum Food Prods. Co.

~~33-35th St~~ 19 Rector St

New York 6, ~~Brooklyn~~ New York

\# 901-10/19/45 - according to their letterhead

3

1945

1945

C3053	MAY 12	1716.23		3,529.14 *
	MAY 17	1132.25	5/34	
3,529.14	MAY 21 CSH		C8053 - *	2848.51 *
2,848.51	MAY 23	4916.10	6/14	7,764.61 *
7,764.61	MAY 24	1069.20 -	5/31	
	MAY 25	12,096.00 -	6/14	20,929.81 *
20,929.81	MAY 31		2848.51 - *	
	MAY 31		1069.20 - *	17,012.10 *
17,012.10	MAY 31	1055.55 -	6/14	18,067.65 *
18,067.65	JUN 6	10,375.58		
	JUN 6	1252.35	6/18	29,695.68 *
29,695.58	JUN 14 CSH		4916.10 - *	
	JUN 14 CSH		13,151.55 - *	11,628.03 *
11,628.03	JUN 18 CSH		11,628.03 - *	.00 CR
	JUN 22	3,531.83 -	7/5	3,531.83 *
3,531.83	JUN 28	1165.73	7/14	4,697.56 *
4,697.56	JUL 5 CSH		3,531.83 - *	1165.73 *
1165.73	JUL 12 CSH		1165.73 - *	.00 CR
	SEP 29	3,897.12	[illegible]	3,897.12 *
3,897.12	OCT 5 DIS	5053.77	10/17	8,950.89 *
8,950.89	OCT 12	11200.00	10/[illegible]	20,150.89 *
20,150.89	OCT 17 CSH		8950.89 - *	11,200.00 *
11,200.00	OCT 20	13,440.00	10/31	24,640.00 *
24,640.00	OCT 22 CSH		11200.00 - *	13,440.00 *
13,440.00	OCT 27	22,693.51	[illegible]	36,133.51 *
36,133.51	OCT 31 CSH		13,440.00 -	22,693.51 *
22,693.51	NOV 2	22,346.24	[illegible]	45,039.85 *
45,039.85	NOV 12	11200.00	[illegible]	
	NOV 10	29,164.14	[illegible]	85,403.99 *
85,403.99	NOV 19 CSH		22,346.24 *	63,057.75 *
63,057.75	NOV 17	32,572.50	11/30	95,630.25 *
95,630.25	NOV 21		33,366.97 *	62,263.28 *
62,263.28	NOV 24	21,211.32	11/30	83,474.50 *
83,474.50	NOV 30 CSH		53,783.32 -	29,690.78 *
29,690.78	NOV 30	2356.18		
	NOV 30	11,234.58	12/10	43,281.84 *
43,281.84	NOV 30 C/M		452.39 *	42,829.45 *
42,829.45	DEC 6 CSH		29,164.14 *	
	DEC 10 CSH		13,657.35 *	743 *
743	DEC 8	25,640.03		25,647.46 *
25,647.46	DEC 14	749.93	[illegible]	
	DEC 15	5886.72	[illegible]	
	DEC 15	13,489.24	[illegible]	50,773.35 *
50,773.35	DEC 19	8,694.00	[illegible]	59,467.35 *

[illegible]

[fol. 157]

SHOTWELL MFG Co
2 Cr.
Catawm Food Prods. Co.
19 Rector St
New York 6, N. Y.

1945

5 9 4 0 7.3 5	DEC 20	15.0 3 0 1 0 —			
	DEC 20	45 1/8 7 1 2 —			
	DEC 21	8 4 1.5 0 —			7 2 1 2 6 5 7 *
7 2 1 2 6 5 7	DEC 26 CSH			2 6 3 9 3.7 4 —	4 5 7 3 2.9 3 *
4 5 7 3 2.9 3	DEC 10		3.7 8		4 5 7 3 6.7 1 *
4 5 7 3 6.7 1	DEC 5 C M 1050			7 1 3 —	4 5 7 2 9.2 8 *

1946

4 5.7 2 9.2 8	JAN 10	1 1,8 0 1.7 6			5 7,5 3 1.0 4 *
5 7,5 3 1.0 4	JAN 17	1 4 2 5 2.6 4			7 1.7 8 3.6 8 *
7 1.7 8 3.6 8	JAN 19	1 0,5 8 1.9 0			8 2,3 6 5.5 8 *
8 2,3 6 5.5 8	JAN 7 CSH			1 3 8 8 1.4 2 —	
	JAN 5 CSH			1 3 3 5 6.6 2 —	
	JAN 16 CSH			1 8 4 8 9.2 4 —	
	JAN 21 CSH			1 1 8 0 1.7 6 —	2 4,8 3 4.5 4 *
2 4,8 3 4.5 4	JAN 28 CSH			1 4 2 5 2.6 4 —	1 0,5 8 1.9 0 *
1 0,5 8 1.9 0	FEB 4 CSH			1 0 5 8 1.9 0 —	.0 0 CR
	FEB 28	5 8 3 4.5 4			5 8 3 4.5 4 *
5 8 3 4.5 4	MAR 11 CSH			5 8 3 4.5 4 —	.0 0 CR

1946

Candy division of the above has been changed to the "General Confections, Inc. at 40 W 170 th St, Bronx, N. Y." per Mr. Lubbins 3/11/46 letter E. 33401 3/15/46.

See card under General Conf for future sales

SHOTWELL MFG. Co

Jan., 1946

General Foods Inc
40 W 176 th St
Bronx 52, N.Y.

For past allocation, see card of Catalina Steel Prods. Co. of which this new company is the candy division

	MAR 25	1153.20		1153.20*
1153.20	APR 4	1523.52		2676.72*
41st 2676.72	8 CSH		1153.20 — ✓	1523.52*
1523.52	APR 20	1040.93 — 5/20.		
4501C	APR 18	3513.31 — 5/20.		
	APR 18	1741.43 — 5/19.		
	APR 13	5286.13 4-26		
	APR 12	1027.50 4-26		
	APR 12	4501.50 4-26.		
	APR 10	6094.35 — 5/17.		
	APR 10	1732.50 4-26		26903.43*
26903.43	APR 25	5409.60 — 5/17.		
	APR 25	3148.65 — 5/19.		3546158*
3546158	APR 22 CSH		1523.52 — ✓	
	APR 26 CSH		1238969 — ✓	2154817*
2154947	APR 27	6000.20 — 5/20		
	APR 30	3010.24 — 4/3.		
	APR 30	4077.74 — 5/		4023655*
4023655	MAY 1	5544.34 — 5/21.		
	MAY 6	7200.00 — 6/3.		
	MAY 6	0857.70 — 6/3.		5587.25*
5587.25	MAY 3 CSH		1741.43 — ✓	
7/12	MAY 2 CSH		1040.93 — ✓	
2004	MAY 9 CSH		3007.30 — ✓	
4044838	MAY 17 CSH		3148.65 — ✓	4044838*
	MAY 20 CSH		5409.50 — ✓	
	MAY 20 CSH		6000.20 — ✓	
2436034	MAY 7 C M #265 (Plant adjoining CC Inc.)		4077.74 — ✓	2436034*
2426424	MAY 27 CSH		96.50 — ✓ 5/31/46	4264.24*
1871940	JUN 3 CSH		5544.34 — ✓	1871940*
	JUN 3 CSH		7200.00 — ✓	
	JUN 3 CSH		8010.24 — ✓	
9650 —	JUN 18	2000.00 7/10.	0857.70 — ✓	9650*
	JUN 20	2484.00 7/12.		5987.40*
5987.40	JUN 25	2056.30 — 7/		8044.20*
8044.20	JUN 28	3700.10 — 7/13.		1094.450*
1094.450	JUL 3	3097.20 — 8/9.		
	JUL 3	2794.00 — 8/7.		
	JUL 8	3875.00 — 8/8.		2070730*
2070730	JUL 10	4200.00 — 8/6.		2322730*
2322730	JUL 12 CSH		2056.30 — ✓	
	JUL 12 CSH		2484.00 — ✓	1308700*
1308700	JUL 13 CSH		2300.40 — ✓	
	JUL 13 CSH		3000.00 — ✓	1218660*
1218660	JUL 17	4100.40 8/		16287.00*

ALL FORWARD

[fol.159]

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AUDIT REPORT DATED 4/30/47 IN FILE
5/27/47

SHOTWELL MFG Co
General Confections Inc
to W. 170th St
Bronx 52, N.Y.

MAY 1946
L N R

1946

BAL. FORWARD				
16,287.00	JUL 12	1,638.00 8/10		17,925.00 *
17,925.00	JUL 23	1,202.40 } 8/12		19,127.40 *
19,127.40	JUL 23	14,748.16		
	JUL 24	2,040.00 8/13		35,915.56 *
35,915.56	AUG 2	15,877.12 9/24		51,792.68 *
51,792.68	AUG 6 CSH		2,520.00	
	AUG 7 CSH		2,678.40	46,594.28 *
8/17 46,594.28	AUG 7	14,757.12 9/9		61,351.40 *
61,351.40	AUG 8 CSH		3,387.60	57,963.80 *
57,963.80	AUG 9 CSH		3,697.20	54,266.60 *
54,266.60	AUG 9	8,377.60 9/7		
	AUG 8	2,404.80 9/5		65,049.00 *
65,049.00	AUG 10 CSH		5,738.40	
	AUG 12 CSH		15,950.56	
	AUG 13 CSH		2,040.00	41,320.04 *
41,320.04	AUG 14	1,202.40 9/3		42,522.44 *
8/30 42,522.44	SEP 5	408.00 11/6		42,930.44 *
42,930.44	SEP 3 CSH		1,202.40	
	SEP 5 CSH		2,404.80	
	SEP 7 CSH		8,377.60	
	SEP 9 CSH		14,757.12	16,188.52 *
16,188.52	SEP 24 CSH		15,877.12	311.40 *
311.40	SEP 24	18,672.64		18,984.04 *
18,984.04	OCT 17 CSH		8,000.00	10,984.04 *
10,984.04	OCT 22	2,404.80 11/20		13,388.84 *
13,388.84	OCT 23	636.16 11/9		14,025.00 *
14,025.00	OCT 29	1,202.40 11/20		15,227.40 *
15,227.40	OCT 3	175.11 11/6		15,402.51 *
15,402.51	NOV 4 CSH		8,000.00	
	NOV 6 CSH		3,255.75	4,146.76 *
4,146.76	NOV 4	1,202.40 11/20		
	218223 NOV 6	19,676.16		25,025.32 *
25,025.32	NOV 9 CSH		636.16	24,389.16 *
24,389.16	196046 NOV 16	6,653.18		31,042.34 *
31,042.34	NOV 20 CSH		4,809.60	26,232.74 *
26,232.74	196511 NOV 21	7,757.43		33,990.17 *
33,990.17	197715 NOV 26	4,489.33		38,480.00 *
38,480.00	202700 DEC 10	3,175.20		41,655.20 *
41,655.20	DEC 17	3,360.52		45,015.72 *

1947			1947	
45,015.72	JAN 13 CSH		5,000.00	40,015.72 *
40,015.72	JAN 20 CSH		5,000.00	35,015.72 *

[fol. 163]

GOVERNMENT EXHIBIT 200A

Government Exhibit 200A

Accounts Rec. Athens

SHOTWELL MFG. CO
Eastern Food Prod.
33-33 st St
Brooklyn, N.Y.

Government Exhibit 200A
Defendants Exhibit
(✓) Iden.
(✓) Rec'd.
In the District Court of the United States
Northern District of Illinois
No.
Roy E. Toner - Official Court Reporter
1944

	MAY 25	850.00 6/16		850.00 *
850.00	JUN 16 CSH		850.00 -	.00 CR
	JUL 21	595.00 8/11		595.00 *
595.00	AUG 11 CSH		595.00 -	.00 CR
	AUG 10	74.38 8/24		74.38 *
74.38	AUG 21	159.38 - 8/24		233.76 *
233.76	AUG 21 CSH		74.38 -	159.38 *
159.38	AUG 28 CSH		159.38 -	.00 CR
	SEP 7	153.00 - 9/8		153.00 *
153.00	SEP 18		153.00 -	.00 CR

1945 1945

200C

SHARWELL MFG Co.

Miscellaneous a/c Others

4448.01	DEC 21 VO #20397			19136 – 1/23		
	DEC 21 VO #20398			93138 – 1/20		43364.77 *
43364.77	DEC 27 VO #20466			10452 – 1/21		43260.25 *
43260.25	DEC 30 A/M #428	129.10	Hartman & Cubell			43389.35 *
43389.35	DEC 31 J/E #428			42895.58 – 1/15		49377 *
49377	DEC 31 J/E #428			730 – 1/4		465.97 *

5-24-143

FEB 19

AT [illegible]

BOX [illegible]

1947

485.97	JAN 8 CSH			29.00 –		
	JAN 9 CSH			1.05 –		455.92 *
455.92	JAN 9	1314	Manhattan Paper			
	JAN 11	100 –	1/21 Merrill & Kenihan			47336 *
47336	JAN 21 CSH			4.00 –		46936 *
46936	JAN 17 CSH			43.00 –		42636 *
42636	JAN 17	43.00 –	1/17 A/B Dictating Serv			46936 *
46936	JAN 22	50.00 –	1/20 Remann & Co.			51936 *
51[illegible]36	Jan 30 CSH			50.00 –		46[illegible]36 *
46936	JAN 14 VO #20990	100.00 –	1/15 Vito Spinelli			
	JAN 20 VO # 21124	47.50 –	1/17 Manhattan Paper			
	JAN 28 VO 21391	989	1/26 Pell Gordon Corp.			626.75 *
626.75	JAN 20 VO # 21124	Manhattan Paper	13.44 –	1/9		
	JAN 20 VO # 21178	J. L. Hartman	1414.31 –	1/31		
	JAN 21 VO # 21249	Hartman, Cubell	129.10 –	12/30/47		930.10 CR
930.10 –	FEB 5	360.00 –	2/2			
	FEB 5	240.00 –	2/5 Mid States Gummed Paper			
	FEB 5	240.00 –	2/10 Lawton Elastic Bkg. Co.			
	FEB 6	480.00 –	2/3 Anderson Decalcomania			
	FEB 6	240.00 –	2/9 Lee Bingham Lee			
629.90	FEB 4 CSH		Underhill Supply	2682 –		629.90 *
	FEB 6 CSH			240.00 –		36308 *
36308	FEB 10	149.94 –	2/11 Old Mill Paper Prod.			51302 *
51302	FEB 13 CSH			8230 –		43022 *
43022	FEB 12	8280 –	2/12 Cash Sale			51302 *
51302	FEB 20 CSH			989 –		
	FEB 22 CSH			480.00 –		
	FEB 22 CSH			360.00 –		33687 CR
33687 –	FEB 25	57.54 –	2/21 Daniels Mfg. Co.			27933 CR
27933 –	FEB 15 VO 21290			100.00 –	1/14	37933 CR
37933 –	FEB 19 VO # 21956	J. L. Hartman	1041.71 –	1/31		202104 CR
202104 –	FEB 27	1518.40	Cash Sales			
	FEB 27	847.84 –	2/17 Clines Press			34520 *
34520	FEB 28	Manhattan Paper		47.50 –	1/20	29770 *

[fol. 165]

GOVERNMENT EXHIBIT 200C

REPORT DATED 5/7/41 IN FILE

SHOT WELL MFG CO

7/17/47

Jan. 1946

2/13/46

General Confections, Inc

Hillsdale, New Jersey

Info. Ruckes #5853
7/1/47

35015.72	JAN 31 J/E #13 9650 - 9/7/46 write off Paine adjust but wrong			35112.32 *
35112.32	FEB 17 J/E #40 commission		1207.77 -	33,904.55 *
33,904.55	FEB 14 CSH		5000.00 - ✓	28,904.55 *
28,904.55	FEB 17 CSH		500.00 - ✓	28,404.55 *
28,404.55	FEB 27 CSH		500.00 - ✓	27,904.55 *
27,904.55	FEB 21 VO ~~#~~ lb. 5000.00 +			32,904.55 *
32,90[illegible]	[illegible] CSH		500[illegible] - ✓	32,404.55 *
32404.55	MAR 14 J/E #98 commissions		1080.00 -	31324.55 *
31324.55	APR 1 J/E myrtle		1087.00 -	30,237.55 *
30,237.55	APR 1 J/E 135 commissions		1251.30 -	28,986.25 *
28,986.25	MAY 13 J/E #176		1190.00 -	
	MAY 19 J/E 178 commissions		1463.54 -	26,332.71 *
26,332.71	MAY 22 VO # 24967		7,100.00 -	19,232.71 *
19,232.71	MAY 22 VO # 24967		500 -	19,227.71 *
19,227.71	[illegible] J/E 219 commissions		1192.22 -	18,035.49 *
18,035.49	JUN 30 J/E #241		299.55 -	17,236.94 *
17,236.94	JUL 30 J/E #264		7,394.83 -	9,842.11 *
9,842.11	JUL 18 J/E #266 Commissions		1204.46 -	8,637.65 *
8,637.65	JUL 30 CSH		1002.83 -	7,634.82 *
7,634.82	AUG 14 J/E #313 commissions		668.59 -	6,966.23 *
6,966.23	SEP 23 CSH		1000.00 -	5966.23 *
5966.23	SEP 17 J/E #351 commissions		1408.01 -	4558.22 *
4558.22	SEP 29 CSH		1000.00 -	3,558.22 *
3558.22	OCT 15 J/E #406 commissions		1269.15 -	2289.07 *
2289.07	NOV 1 CSH		1000.00 -	1289.07 *
1289.07	Nov 13 J/E #462 commissions		121.91 -	1167.16 *
1167.16	DEC 1 J/E #510		1000.00 -	167.16 *
167.16	DEC 12 J/E #517 commissions		19.16 -	148.00 *
148.00	DEC 11 VO 1080.00 - 17/11			1228.00 *
1228.00	DEC 11 VO		1080.00 * 17/11	148.00 *
148.00	DEC 30 VO #31977 3480.00			3628.00 *
3628.00	DEC 31 J/E # 541 (Paine adj)		1129.436 -	7,066.38 CR
7,066.38 -	DEC 31 VO #32032 4040.00 //			3,026.38 CR
3,026.38 -	DEC 31 J/E #593 #34 Cl. - Unc. 4% Rec Pd			1074.51 CR

1945

1948

BAL. FORWARD

[fol. 161]

CREDIT REPORT DATED _____ IN FILE

SHOTWELL MFG CO

General Confections Inc.
Hillsdale
New Jersey

FORWARD

1948

3,074.51 –	JAN 16 J/E #3	1000.00 –	4,074.51 CR
4,074.51 –	JAN 19 VO#2327 578340		1708.89 *
1,708.89	FEB 18 J/E #61	20.00 –	1,688.89 *
1,688.89	FEB 20 CSH	1023.33 –	665.56 *
665.56	MAY 11 J/E #237	665.56 –	.00 CR

Taken off the List
Date

MIC B 4/48 " " or "
MCA 4/48 $600 (over 60) days past due

FROM

THE SHOTWELL MFG. CO.

CONFECTIONERY SPECIALTIES — Shotwell's — MARSHMALLOWS

3501 Potomac Ave. — CHICAGO, ILL.

1/6/47

DO NOT SHIP

ALL FURTHER ORDERS TO BE REFERRED TO MR. GRAFLUND BEFORE PASSING

BARBARA

TIME _____
WEIGHT _____

CONTENTS MERCHANDISE – FOURTH CLASS MAIL
Postmaster: This parcel may be opened for postal inspection if necessary.
RETURN POSTAGE GUARANTEED

GOVERNMENT EXHIBIT 200B

Government Exhibit 200B Defendants Exhibit (✓) Iden. (✓) Rec'd.
In the District Court of the United States
Northern District of ...
No.
Roy E. ... Reporter

SHOTWELL MFG CO
David Lubben
40 W 170th St
N.Y., N.Y.

1947

	APR 19 D/M#87 1028.16	Transf Merch	1028.16 *
1028.16	APR 21 CSH	500.00 -	528.16 *
528.16	APR 25 CSH	528.16 -	
	APR 25 CSH	295.39 -	295.39 CR
295.39 -	APR 25 D/M #196 295.39 - 4/25		.00 CR

52 or 143

FILED

AT

Shot Well MFG Co
Miscellaneous a/c Others

BAL. FORWARD 1946

26,503.06	OCT 2 VO		41.40 -	26,461.66 *
26,461.66	OCT 31 J/V #355	7.94	12/4 Smithfield	26,469.60 *
26,469.60	OCT 7 VO #18407	7,500.00 -	12/31 Dauckerman	33,969.60 *
33,969.60	OCT 18 VO #18695	7,500.00 -	12/31 Dauckerman	41,469.60 *
41,469.60	OCT 21 VO #18770	7.98		41,477.58 *
41,477.58	OCT 21 VO #18778	.30	12/24 Jannsteiner	41,477.88 *
41,477.88	OCT 30 VO #19001	300.00 -	12/31 Cadillac Motor Car	41,777.88 *
41,777.88	NOV 1 CSH		50.00 -	
	NOV 2 CSH		10,796.98 -	
	NOV 6 CSH		4069.47 -	26,861.43 *
26,861.43	NOV 4	7.80	12/31 Murnane Paper	26,869.23 *
26,869.23	NOV 7	53.91	12/ Belden Stratford	26,923.14 *
26,923.14	NOV 7 CSH	Peter [illegible]	337.50 -	26,585.64 *
26,585.64	NOV 13 CSH		11268.60 -	15,317.04 *
15,317.04	NOV 4 D/M #374	1.54 -	12/23 Charles Stores	
	NOV 17 D/M #376	337.50 -	11/7 Peter Fox	
	NOV 20 D/M #391	931.38 -	12/21 Murnane Paper	16,587.56 *
16,587.56	NOV 15	257.72 -	11/27 Crystal Lube Corp.	
	NOV 15	900.00 -	11/ Armstrong Food Co	17,745.28 *
17,745.28	NOV 20 CSH		900.00	16,845.28 *
16,845.28	NOV 26 CSH		1.05 -	16,844.23 *
16,844.23	NOV 29 CSH		80.58 -	
	NOV 27 CSH		257.72 -	
	NOV 30 CSH		53.55 -	16,452.38 *
16,452.38	NOV 21 D/M #394	104.52	12/29 Maxwell Bros	
	NOV 21 D/M #393	1.05 -	11/26 Karzen Trucking	16,557.95 *
16,557.95	NOV 27 VO #19090	750.00 -	12/31 Dauckerman	
	NOV 7 VO #19166	7,500.00 -	12/31 "	24,807.95 *
24,807.95	NOV 25 VO #19[illegible]	10,878.50 -	12/31 "	35,686.45 *
35,686.45	DEC 6 CSH		122.27 -	35,564.18 *
35,564.18	DEC 6 CSH		36.43 -	+ 35,527.75 *
35,527.75	DEC 11 CSH		53.91 -	35,473.84 *
35,473.84	DEC 13	264.00 -	12/18 Remington Rand	35,737.84 *
35,737.84	DEC 18 CSH		264.00 -	35,473.84 *
35,473.84	DEC 23 CSH		1.54 -	35,472.20 *
35,472.20	DEC 30	29.00 -	1/8 Merrill & Renehan	
	DEC 30	28.37 -	12/30 Corrugated Containers	
	DEC 23	191.36 -	12/21 S. V. Cain	35,721.93 *
35,721.93	DEC 30 CSH		28.37 -	35,693.06 *
35,693.06	DEC 9 D/M #400	26.82	2/4 Denison Peanut Co	
	DEC 20 D/M #410	1.05 -	1/9 Karzen Trucking Co	35,720.93 *
35,720.93	DEC 17 VO #20243	7,500.00	12/31 Dauckerman	43,220.93 *
43,220.93	DEC 19 VO #20303	1267.08	"	44,488.01 *
44,488.01	DEC 21 VO			
				44,488.01 *

BAL. FORWARD

SHOTWELL MFG CO

Miscellaneous A/C Rec Others

BAL. FORWARD

1946

1721.37	APR 22 CSH				200000 -		278530
278.53 -	APR 18 CSH				2250 -		301230
301.23 -	APR 29 CSH				41448 -		715710
715.71 -	APR 23 DM #319		500 -	4/23			710710
710.71 -	APR 8 VO		110391	4/5 Autos Penalty			393.20 *
393.20	APR 11 VO/3603		27.95	4/11 Apache			421.15 *
421.15	APR 11 VO				27.95 - 4/11		393.20 *
393.20	APR 9 VO/4019		4.05	4/15 Trans for Wilson & Co			397.25 *
397.25	MAY 3		5000 -	5/13 Armalite & Co			
MAY 1			1735 -	5/14 Eastern Foods Co			465.10 *
465.10	MAY 4 CSH				200.00		265.10 *
265.10	MAY 15		20000 -	5/14 Halpern Office Furniture			
MAY 15			1700 -	5/20 Rusan Co			482.10 *
482.10	MAY 13 CSH	Armour			100.00 -		
MAY 14 CSH	Eureka				17.35 -		
MAY 20 CSH	Consolidated Royal Am				187.50 -		
MAY 20 CSH	Rusan Co				17.00 -		159.75 *
159.75	MAY 23 C/M #231				54.00 - used 6/18		105.75 *
105.75	MAY 14 C/M #824	Traders Terminal Whse			64.38 - used 6/13		41.37 *
41.37	MAY 24 DM #2998		86.76	6/13 Traders Terminal			128.13 *
128.13	MAY 9 DM #323		80.58	6/19 Seeboldt Corp.			208.71 *
208.71	MAY 25		67.00	5/27 Retco Alloy Co.			275.71 *
275.71	MAY 28 CSH				67.00 -		208.71 *
208.71	MAY 28		39.31	6/4 Corrugated Container			
MAY 29			50.00	6/20 Rusan & Co			298.52 *
298.52	MAY 15 VO/5038				37.80 - 6/11		260.72 *
260.72	JUN 4 CSH				39.31 -		221.41 *
221.91	JUN 17		100.00	6/ Offitzers			321.91 *
325.91	JUN 13 CSH				90.33 -		235.58 *
235.58	JUN 20 CSH				50.00 -		
JUN 19 CSH					105.00 -		80.58 *
80.58	JUN 28		39.56	7/9 Old Mill			119.14 *
119.14	JUN 27		23.27	7/2 Corrugated Containers			142.41 *
142.41	JUN 24 DM 334		41.10	7/3 Eagle Paper Board			
JUN 20 DM 331			86.30	7/16 Sund Rubber			
JUN 20 DM 332			7.11	10/46 N. Bottenstein			77.22 *
277.22	JUN 5 J/E 184		19.83	6/4 Hogan J E			
JUN 5 J/E 184			234.91	6/4 Kelley J B			710.51 *
710.51	JUN 4 VO 15431				234.91 - 6/5		
JUN 4 VO 15431					19.83 - 6/5		77.22 *
277.22	JUL 3 CSH	Chippewa Paper			41.10 -		
JUL 2 CSH	Eagle Paper Box				23.27 -		212.55 *
212.55	JUL 1		139.45	7/14 Ole Mill Paper Corp.			
JUL 2			220.15	6/ Rusan Corp			570.15 *

[illegible]

[illegible]

[illegible]

SHOTWELL HFG Co
Miscellaneous a/c others

AV74 FORWARD

970.15	JUL 9	24.00	7/31 Daniels Mfg Co		94.15 *
994.15	JUL 16 CSH		Lubbin	86.30 – 6/30	907.85 *
907.85	JUL 19 CSH		Old Mill Paper	176.01 –	731.84 *
731.84	JUL 2 B/M #337	250.00	7/4 Lynch Mfg Co		981.84 *
981.84	JUL 26	16,000.00 –	8/13 General Conf		16,981.84 *
16,981.84	JUL 16 VO 16092			250.00 – 7/4	16,731.84 *
16,731.84	JUL 31 J/E 248			24.00 – 7/4	16,707.84 *
16,707.84	AUG 9 CSH			620.15 –	16,087.59 *
16,087.69	AUG 13 CSH			16,000.00 –	87.59 *
87.69	AUG 15	96.00	8/20 Morrill + Renshaw		183.59 *
183.69	AUG 20 CSH			96.00 –	
	AUG 19 CSH			28.90 –	58.79 *
58.79	AUG 5 VO	190.13	Apelson 10/18 a Krause		
	AUG 16 VO 168 00	28.90	8/19		277.82 *
277.82	SEP 5	158.70	13/6 Hills McCanna Co		436.52 *
436.52	SEP 11	4069.47	11/6 General Conf Inc		4505.99 *
4,505.99	SEP 17 CSH			20.00	4485.99 *
4,485.99	SEP 12	31.56	10/2 Murnane Paper		
	SEP 17	20.00	9/17 Maloney Gilmore		4537.55 *
4,537.55	SEP 19	42.00	9/24 Morrill + Renshaw		4579.55 *
4,579.55	SEP 24 CSH			42.00	4537.55 *
4,537.55	SEP 23	9.84	10/2 Murnane Paper		4547.39 *
4,547.39	OCT 3	37.94	10/2 Eagle Paper Box		
	OCT 3	397.30	10/4 Smithfield Goods		4982.53 *
4982.53	OCT 4 CSH	Smithfield		405.24 –	4577.39 *
4577.39	OCT 4 CSH			7.11 –	4570.28 *
4570.28	OCT 9	83.70	10/25 Smithfield		
	OCT 9	79.92	"		
	OCT 4	121.20	10/1 Dairyland Cdy Co		4855.10 *
4855.10	OCT 11	30796.98	10/29 10/1 11/2 General Conf		35652.08 *
35,652.08	OCT 11 CSH			121.20 –	35,530.88 *
35,530.88	OCT 17 CSH			37.94 –	
	OCT 18 CSH			190.13 –	35,302.81 *
35,302.81	OCT 18	201.78	10/30 Dairyland Cdy Co		35,504.59 *
35,504.59	OCT 19	11,268.60	11/13 Genl Conf		46,773.19 *
46,773.19	OCT 25 CSH			163.52 –	46,609.57 *
46,609.57	OCT 24 CSH			8.28 –	46,601.29 *
46,601.29	OCT 25	50.00	Kirkpatrick 11/1 Armour + Co		
	OCT 25		Eagle Paper Box		46,651.29 *
46,651.29	OCT 29 CSH			10,000.00 –	
	OCT 26 CSH			201.78 –	36,449.51 *
36,449.51	OCT 31 CSH			10,000.00 –	26,449.51 *
26,449.51	OCT 9 B/M #360	53.55	11/30 S.V. Cain		26,503.06 *

The **SHOTWELL MFG. CO.**
CONFECTIONERY SPECIALTIES
3501 POTOMAC AVENUE ... CHICAGO 51, ILLINOIS
PHONE CAPITOL 0600

213

February 8, 1946

FILE 5-2 cr 143

FEB 1

Busby & Oury
120 S. La Salle Street
Chicago, Illinois

AT..... O
ROY H.

Gentlemen:

To enable you to prepare financial statements we submit our inventory of raw materials, work in process, finished stock and factory supplies which was taken by physical count, weight, or other measure at December 31, 1945, and priced at the lower of cost or market. An allowance was made for all slow moving and obsolete items which were contained in the inventory at that date.

We further request that you do not circularize the outstanding balances of Accounts Receivable due from customers at December 31, 1945.

Insofar as we are able to determine we certify that the company is not contingently liable under any purchase or sales contracts at the Balance Sheet date, and that we have abided by all regulations of the Office of Price Administration, War Labor Board, Salary Stabilization Act of 1942, State Labor Laws, and other governmental restrictions.

Very truly yours,

THE SHOTWELL MFG. CO.

Howard J. Rosser
Comptroller & Asst. Treasurer

Frank J. Huebner
Vice President

[fol. 169]

GOVERNMENT EXHIBIT 213

DEFENDANTS' EXHIBIT 1A

(See Opposite) ☞

[fol. 170]

DEFENDANTS' EXHIBIT 1A

		Check to Bert Rock	19300 00	– 300	Afar
July 9		" " " "	5445 00		
			11920		

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[fol. 171]

Received from Sam Krane
4/1/53

Paid Outs				Money Received			
July	1	Carey (Sugar Cartage)	73 27	July	3	Cash - 25-15.75	393 75
"	2	Frankie 250 bags - 9	2250 00	"	3	Cash 1000# Licorice	297 00
[redacted]				"	3	" Waste Paper	8 50
"	5	Mike Cohen Boston 150 corn chips	1746.00	"	5	Cash - 3000# Licorice 2820# "	1708 70
"	6	Gerta 5628 Cocoa 21 lb	1181 25	"	6	Bert Rock (	3000 00
"	6	Pur Amy	1469 02	"	6	Bert Rock	4000 00
"	6	Fleelwood 596 Deal	3000 00	"	9	" "	10000 00
"	6	Frankie 200 Bags	1850 00	[redacted]			
"	9	Fleelwood 596 Deal	2960 00	[redacted]			
"	9	J.S. 386 - Dept 14	5404 00	July	9	Received from Burry Trans	1913 58
"	"	SK. 182 " 3 1/2	960 -	"	9	Profit check drawn 319.91	" 319 91
"	9	596 - Cerulose D#4	2384 00				

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[fol. 173]

Received from Sam Krane

4/1/58

Money Received

June	20	Comm earned on Sugar	250 00
"	20	Cash sale (Raisins to Gerly	4504 40
"	20	Cash (Peanut Hearts etc)	760 00
"	21	Cash (Licorice Sweets	47 52
"	22	Cash (3080# Licorice 30)	1069 20
"	26	cash (Comm earned #5)	325 00
"	28	Cash sale 3000# Licorice	891 00
"	"	" " 120# "	47 52
"	29	Rubinson 30000 lbs Bullion	7109 40

Paid Out

June	20	Ed Urban	4504 40
"	21	Stone "Lunch hut" mix	1700 –
"	21	Licorice Centers (cash)	357 50
"	21	Adv. Morton Margaret)	100 –
"	26	Cere Cere - 300 - 5½	1650 –
"	26	Frank 100 - #5	925 –
"	28	Millstein (candy Pearls)	2500 00
"	28	Pur Ams ($3200.00)	455 34
"	29	Teddy (Union)	100 00
"	29	Millstein (Pearls	1375 10
"	30	Blue Ribbon	380 00
"	30	Gum Products	6111 28

July

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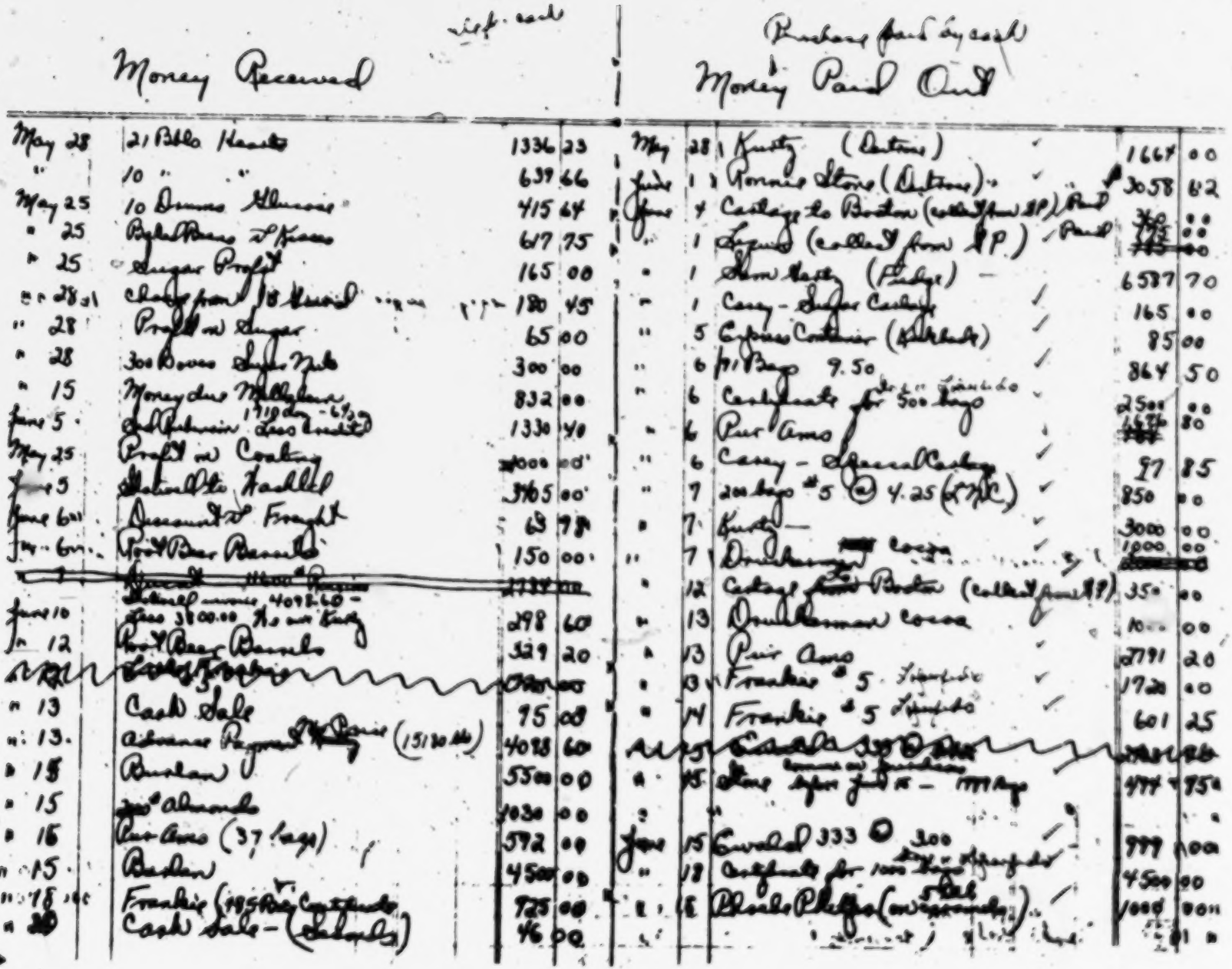
[fol. 175]

Received from Sam Krane

4/1/53

[fol. 176]

DEFENDANTS' EXHIBIT 1D



[fol. 177]

Received from Sam Krane

4/1/53

[fol. 178]

DEFENDANTS' EXHIBIT 2

March 13, 1944

MEMO TO: DAVE LUBBEN

FROM: F. E. BREWSTER

Dear Dave:

I have prepared your Income Tax Return for the year 1943, based on the income you reported to me from Kroger Grocery & Baking Company, and the income as shown on the books of Eatsum Food Products Company. It is my understanding that this covers your entire income for the year, and the deduction of $330.00 as shown on the work sheet represent legal deductions, to the best of your knowledge and belief, from the income as reported. On the basis of the data as given, your taxes for the year ending 1943 amount to $2,591.17. Of this amount, $118.74 may be postponed until March 15, 1945, the balance is due and payable on March 15, 1944. As I am not in a position to vouch for all of the figures as given, I am unable to sign the return as being the agent preparing same for you. This statement need not be signed by me as all that is required is your signature and date under the affadavit on the first page.

The tax I show does not include any penalty for failure to pay estimated tax on September 15 and December 15, 1943. This penalty will be assessed by the Internal Revenue Department after a review of the returns.

FEB:ced

FORM 1040
Treasury Department
Internal Revenue Service

UNITED STATES
INDIVIDUAL INCOME AND VICTORY TAX RETURN

Page 1

1943

OPTIONAL FORM 1040A MAY BE FILED INSTEAD OF THIS FORM IF GROSS INCOME IS REPORTED ON THE CASH BASIS FOR THE CALENDAR YEAR, IS NOT MORE THAN $3,000, AND CONSISTS *WHOLLY* OF SALARY, WAGES, OTHER COMPENSATION FOR PERSONAL SERVICES, DIVIDENDS, INTEREST OR ANNUITIES

FOR CALENDAR YEAR 1943

or fiscal year beginning ....., 1943, and ending ....., 1944

PRINT NAME AND ADDRESS PLAINLY. (See Instruction C)

1841 Parvey
Ny city

DAVID G. LUBBEN
(Name) (Use given names of both husband and wife, if this is a joint return)

1932 NORTH NASHVILLE AVE
(Street and number, or rural route)

CHICAGO ILLINOIS
(City or town) (State)

Occupation JOBBER Social Security number, if any 325-05-3029

(Do not use these spaces)

File Code

Serial No.

District

(Cashier's Stamp)

COMPUTATION OF NET INCOME

	Employer's Name	City and State	Column 1 Income Tax Net Income		Column 2 Victory Tax Net Income	
INCOME						
1. Salary, Wages, and Compensation for Personal Services (Members of armed forces see Instruction I)	KROGER GROCERY + BAKING CO.	CINCINNATI OHIO	$ 2000	00	$ 2000	00
Total			$		$	
Less: Deductible expenses. (Attach itemized statement)			—		—	
Compensation after deductible expenses			$ 2000	00	$ 2000	00
2. Dividends			—		—	
3. Interest on corporation bonds, bank deposits, notes, etc.			—		—	
4. Interest on Government obligations, etc.: (a) From line A (8), Schedule A			—		xxxxxxx	xx
(b) From line B (5) and (3), Schedule A			—		—	
5. Annuities			—		—	
6. (a) Net gain (or loss) from sale or exchange of capital assets. (From Schedule B)			—		xxxxxxx	xx
(b) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule B)			—		—	
7. Rents and royalties. (From Schedule C (1))			—		—	
8. Net profit (or loss) from business or profession. (From Schedule C (2)) (State total receipts, from line 1, Schedule C (2) $)			9927	88	9927	88
9. Income (or loss) from partnerships; fiduciary income; and other income. (From Schedule C (3))			—		—	
10. Total income in items 1 to 9			$ 11,927	88	$ 11927	88
DEDUCTIONS						
11. Contributions. (Explain in Schedule D)			$ 200	00	xxxxxxx	xx
12. Interest. (Explain in Schedule E) (See Instructions 12 and 16 for Victory Tax deduction)			—		xxxxxxx	xx
13. Taxes. (Explain in Schedule F) (See Instructions 13 and 16 for Victory Tax deduction)			130	00	xxxxxxx	xx
14. Losses from fire, storm, shipwreck, or other casualty, or theft. (Explain in Schedule G)					xxxxxxx	xx
15. Medical, dental, etc., expenses. (Explain in Schedule H)			—		xxxxxxx	xx
16. Other deductions authorized by law. (Explain in Schedule G)			—		$ —	
17. Total deductions in items 11 to 16			$ 330	00	$ —	
18. Income Tax net income (item 10, col. 1, less item 17, col. 1)			$ 11,597	88	xxxxxxx	xx
19. Victory Tax net income (item 10, col. 2, less item 17, col. 2)			xxxxxxx	xx	$ 11927	88
INCOME AND VICTORY TAX						
20. Unpaid balance of 1943 Income and Victory Tax (from line 22, page 4)					$ 2591	17
21. You may postpone, until not later than March 15, 1945, payment of the amount you owe up to one-half of item 19 (c), page 4. Enter the amount postponed. (For persons whose surtax net income for 1942 or 1943 exceeded $20,000, see Schedule L-2)					—	
22. Amount paid with this return (item 20 less item 21)					$ 2591	17
23. Refund or Credit	If the total of your payments (line 21 (d) on page 4) is larger than your tax (line 20 on page 4), enter the difference. Indicate by a check mark (√) what you want done with this overpayment: Refund it to me ☐; Apply it on my 1944 estimated tax ☐.				$	

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

(Signature of person (other than taxpayer or agent) preparing return) (Date) (Signature of taxpayer) (Date)

(Name of firm or employer, if any)

(If this is a joint return (not made by agent), it must be signed by both husband and wife. A return made by an agent must be accompanied by power of attorney. (See Instruction G)

16—07180-1

COMPUTATION OF INCOME AND VICTORY TAX. (See Tax Computation Instructions)

Page 4

1. Income Tax net income (item 18, page 1)		$ 11592	84
2. Less: Personal exemption. (From Schedule I-(1))	$ 500 00		
3. Credit for dependents. (From Schedule I-(2))	-	500	00
4. Balance (surtax net income)		$ 11142	84
5. Less: Certain interest on Government obligations (item 4 (a), page 1)	$ -		
6. Earned income credit. (From Schedule J-(1) or J-(2))	1159 79	1159	79
7. Balance subject to normal tax		$ 9982	05
8. Normal tax (6% of line 7)		$ 598	92
9. Surtax on amount in line 4. (See Surtax Table, page 3 of Instructions)		2369	79
10. Total Income Tax (line 8 plus line 9). (If Schedule B is used and alternative tax computation made, enter line 16, Schedule B)		$ 2967	71
11. Less: Income Tax paid to a foreign country or U. S. possession. (Attach Form 1116)		-	
12. BALANCE OF INCOME TAX		$ 2967	71
13. NET VICTORY TAX (line 6 of Victory Tax Schedule, below)		423	89
14. Total of lines 12 and 13		$ 3391	60
15. Income Tax paid at source on tax-free covenant bond interest. (See Footnote 1)		-	
16. Line 14 less line 15		$ 3391	60
17. Income Tax for 1942. (See Statement, Form 1125, from Collector) (First, see page 4 of Instructions)		$ 949	92
18. Enter line 16 or 17 whichever is LARGER. (Members of the armed forces see page 4 of Instructions)		$ 3391	60
19. FORGIVENESS FEATURE (Don't fill in (a), (b), and (c) below, if either line 16 or 17 is $50 or less):			
(a) Enter line 16 or 17, whichever is SMALLER	$ 949 90		
(b) Enter $50 or three-fourths of (a), immediately above, whichever is LARGER. This is the FORGIVEN part of the tax	$ 712 43		
(c) Enter the UNFORGIVEN part of the tax which is the BALANCE (subtract (b) from (a)). (See Footnote 2)		237	47
20. TOTAL INCOME AND VICTORY TAX. (Total of lines 18 and 19 (c))		$ 3629	07
21. Less: (a) Income and Victory Tax withheld by employer	$ 88 20		
(b) Income Tax paid on 1942 income	949 90		
(c) Tax paid on 1943 income on account of Declaration of Estimated Tax			
(d) Total payments		1037	90
22. UNPAID BALANCE OF INCOME AND VICTORY TAX. (If line 20 is larger than line 21 (d), enter the difference here and also as item 20, page 1; if not, see item 23, page 1)		$ 2591	17

FOOTNOTE 1.—If you claim a credit in line 15, disregard lines 19 (a) and (b), complete Schedule L-1 on page 4 of Instructions, and enter result in line 19 (c). Attach completed schedule.

FOOTNOTE 2.—If your surtax net income for 1942 or 1943 exceeded $20,000, requiring you to complete Schedule L-2, enter here the amount shown on line 10 or 27 of such schedule, $ ..... and increase 19 (c) by such amount.

Schedule K.—VICTORY TAX. (See Tax Computation Instructions)

1. Victory Tax net income (item 19, page 1)	$ 11921	84
2. Less: Specific exemption ($624 if return reports income of only one person; otherwise, see Instructions, page 3)	624	00
3. Income subject to Victory Tax (line 1 less line 2)	$ 11297	84
4. Victory Tax before credit (5% of line 3)	$ 564	89
5. Victory Tax credit:		
(a) Single person, or married person not living with husband or wife: 25% (plus 2% for each dependent) of line 4, but not more than $500 (plus $100 for each dependent)	$ 141	30
(b) Married person living with husband or wife if separate returns are filed: 40% (plus 2% for each dependent) of line 4, but not more than $500 (plus $100 for each dependent)	$	
(c) Married person living with husband or wife if only one return or a joint return is filed, or head of a family: 40% (plus 2% for each dependent) of line 4, but not more than $1,000 (plus $100 for each dependent). (See Schedule I-(2), for exclusion of one dependent by head of a family)	$	
6. Net Victory Tax (line 4 less line 5). (Enter in line 13, above)	$ 423	89

Schedule L.—To be used only by individuals whose surtax net income for 1942 or 1943 exceeded $20,000
Schedule to determine whether Section 6 (c) of the Current Tax Payment Act of 1943 is applicable

1. Surtax net income for 1942 (item 23, Form 1040 (1942))	$
2. Surtax net income for 1943 (line 4, above)	$

3. Surtax net income for base year, $..... plus $20,000: $..... (Check year used: 1937 ....; 1938 ....; 1939 ....; 1940 ....)

If either line 1 or 2 is greater than line 3, separate Schedule L-2 should be secured from the collector and filed with and as a part of this return.

Note.—If a joint return is filed for either 1942 or 1943 and separate returns for the other of such years, enter the aggregate of the separate surtax net income for the separate return year. The surtax net income to be entered in line 3 shall be determined in the same manner as the surtax net income entered in line 1 or 2, whichever is the [illegible].

U. S. GOVERNMENT PRINTING OFFICE : 1943 16—37179-1

Page 2

Schedule D.—CONTRIBUTIONS. (See ... truction 11)

1. Name and Address of Organization	2. Amount
[redacted]	$ 150 00
RED CROSS	10 00
[illegible]	25 00
[illegible]	15 00
Total. (Enter as item 11, page 1, subject to 15% limitation)	$ 200 00

Schedule E.—INTER... (See Instruction 12)

1. To Whom Paid	2. Amount
	$
Total. (Enter as item 12, page 1)	$

Schedule F.—TAXES. (See Instruction 13)

1. Nature	2. Amount
[illegible]	$ 35 00
[illegible] Taxes	95 00
Total. (Enter as item 13, page 1)	$ 130 00

Schedule G.—LOSSES AND OTHER DEDUCTIONS. (See Instructions 14 and 16)

1. Item No.	2. Explanation	3. Amount
		$

Schedule H.—MEDICAL, DENTAL, ETC., EXPENSES. (See Instruction 15)

1. Name and Address of Person to Whom Payments Were Made	2. Approximate Date of Actual Payment	3. Amount
		$

1. Total medical, dental, etc., expenses actually paid during the year as shown in column 3, above		$
2. Amount received during the year as compensation for such expenses		
3. Payment for medical care not compensated for during the year (line 1 less line 2)		$
4. Total income in item 10, page 1	$	
5. Total deductions claimed in items 11, 12, 13, 14, and 16, page 1		
6. Net income before deduction for medical, dental, etc., expenses (line 4 less line 5)	$	
7. 5% of line 6		
8. Excess of line 3 over line 7. (Enter as item 15, page 1, subject to maximum limitation.) (See Instruction 15)		$

Schedule I.—PERSONAL EXEMPTION AND CREDIT FOR DEPENDENTS. (See Tax Computation Instructions)

(1) Personal Exemption

Status	Number of months during the year in such status	Credit claimed
Single, or married and not living with husband or wife, and not head of family	12	$ 500 00
Married and living with husband or wife		
Head of a family (explain below)		

(2) Credit for Dependents

Name of dependent and relationship	Number of months during the year: Under 18 years old	Number of months during the year: 18 years or over	Credit claimed (Head of a family may not claim credit for dependent used to qualify him as head of a family)
			$

Reason for support if 18 years or over

Schedule J.—COMPUTATION OF EARNED INCOME CREDIT. (See Tax Computation Instructions)

(1) If your net income is $5,000 or LESS, use only this part of schedule.

Net income (item 18, page 1)	$
Earned income credit (10% of net income, above)	

(2) If your net income is MORE than $5,000, use only this part of schedule

Earned net income (not more than $14,000)	$ 11,927 88
Net income (item 18, page 1)	11,597 88
Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but do not enter less than $300)	1159 79

QUESTIONS

1. Did you file a return for any prior year? ..... If so, what was the latest year? ..... To which Collector's office was it sent?
2. If you claimed credit for tax paid in line 21 (c), page 4, to which Collector's office was your declaration sent?
3. If separate return was made for the current year, state:
   (a) Name of husband or wife .....
   (b) Personal exemption, if any, claimed thereon .....
   (c) Collector's office to which it was sent .....
4. Check whether this return was prepared on the cash ☐ or accrual ☐ basis.
5. Was the rate of your salary or wages increased or decreased during your taxable year? (Yes or No) .....
6. Did you receive during your taxable year any amount claimed to be nontaxable (see General Instruction I)? ..... If so, attach schedule showing source, nature, and amount of such income. 182
7. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation, or a personal holding company as defined by section 501 of the Internal Revenue Code? ..... If so, attach statement required by General Instruction L.

16—97120-1

THOSE WHOSE INCOME IS SOLELY FROM SALARIES MAY DISREGARD THIS PAGE

Page 2

Schedule A.—INTEREST AND OWNERSHIP OF TAXABLE GOVERNMENT OBLIGATIONS, ETC. (See Instruction 4)

1. Obligations or securities	2. Amount owned at end of year (par value except for United States savings bonds)	3. Interest
A. Subject to surtax only:		
(1) United States savings bonds (cost price) and Treasury bonds issued prior to March 1, 1941	$	$
(2) Less: Wholly tax-exempt portion, principal amount not in excess of $5,000	xxxxxxxxxxx xx	
(3) Net taxable interest	xxxxxxxxxxx xx	$
(4) Obligations of instrumentalities of the United States issued prior to March 1, 1941 (other than Federal land banks, Federal intermediate credit banks, or joint stock land banks)	$	
(5) Dividends on share accounts in Federal savings and loan associations in case of shares issued prior to March 28, 1942	xxxxxxxxxxx xx	
(6) Subtotal for interest (total of lines 3, 4, and 5)	xxxxxxxxxxx xx	$
(7) Less: Amortizable bond premium. (See Instruction 16)	xxxxxxxxxxx xx	
(8) Balance of interest. (Enter as item 4 (a), column 1, page 1)	xxxxxxxxxxx xx	$
B. Subject to normal tax, surtax, and Victory Tax:		
(1) United States savings bonds issued on or after March 1, 1941 (cost price)	$	$
(2) Other obligations issued on or after March 1, 1941, by the United States or any instrumentality thereof (include also Treasury notes issued on or after December 1, 1940)		
(3) Subtotal for interest (total of lines 1 and 2). (Enter as item 4 (b), column 2, page 1)	xxxxxxxxxxx xx	$
(4) Less: Amortizable bond premium. (See Instruction 16)	xxxxxxxxxxx xx	
(5) Balance of interest. (Enter as item 4 (b), column 1, page 1)	xxxxxxxxxxx xx	$

Schedule B.—Schedule B (Form 1040) is a separate sheet and should be used in reporting gains and losses from sales or exchanges of capital assets and property other than capital assets, and filed with and as a part of this return.

Schedule C(1).—INCOME FROM RENTS AND ROYALTIES. (See Instruction 7)

1. Kind of property	2. Amount	3. Depreciation or depletion (explain below)	4. Repairs (explain below)	5. Other expenses (itemize below)	6. Net profit (column 2 less sum of columns 3, 4, and 5) (enter as item 7, page 1)
	$	$	$	$	$

Schedule C(2).—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction 8)

(State (1) nature of business Fisher Candy & Foodstuffs; (2) business name Eatown Product Co.)

1. Total receipts			$546,467 80
COST OF GOODS SOLD (To be used where inventories are an income-determining factor) (Enter the letters "C," or "C or M," on lines 2 and 8 if inventories are valued at either cost, or cost or market, whichever is lower)		**OTHER BUSINESS DEDUCTIONS**	
2. Inventory at beginning of year	$ —	11. Salaries and wages not included as "Labor" (do not deduct compensation for yourself)	$ — —
3. Merchandise bought for sale	447,577 87	12. Interest on business indebtedness	— —
4. Labor	—	13. Taxes on business and business property	— —
5. Material and supplies	—	14. Losses (explain below)	— —
6. Other costs (explain below)	—	15. Bad debts arising from sales or services	1000 00
7. Total of lines 2 to 6	$ 447,577 87	16. Depreciation, obsolescence, and depletion (explain below)	—
8. Less inventory at end of year	1,711 51	17. Rent, repairs, and other expenses (explain below)	89,673 56
9. Net cost of goods sold (line 7 less line 8)	$ 445,866 36	18. Amortization of emergency facilities (attach statement)	—
10. Gross profit (line 1 less line 9)	$ 100,601 44	19. Total of lines 11 to 18	$ 90,673 56
		20. Total of lines 9 and 19	$536,539 92
		21. Net profit (or loss) (line 1 less line 20). (Enter as item 8, page 1)	$ 9,927 88

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN COLUMN 3 AND LINE 16, ABOVE

1. Kind of property (If buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (not include land or other nondepreciable property)	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accumulating depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
		$	$	$	$			$

EXPLANATION OF DEDUCTIONS CLAIMED IN COLUMNS 4 AND 5, AND LINES 6, 14, AND 17, ABOVE

1. Column or Line No.	2. Explanation	3. Amount	1. Column or Line No.	2. Explanation	3. Amount
		$			$

Schedule C(3).—INCOME FROM PARTNERSHIPS, FIDUCIARIES, AND OTHER SOURCES. (See Instruction 9)

Name and address of partnership, syndicate, etc.	Amount	$
Name and address of fiduciary	Amount	
Other income (state nature)	Amount	
Total (enter as item 9, page 1)		$

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[fol. 184].

Schedule C(2) Other Business Deductions

Line 17	Rent repairs and other expenses:	
	Management fees	4885066 ✓
	Selling expenses - Brokerage & commissions etc	1635159
	Administration expense - Traveling, rent, stationery telephone & telegraph etc.	1061857 ✓
	Freight charges	831089 ✓
	Bank discounts	444027 ✓
	Warehouse expense - rent and handling charges	110158 ✓
		8967356

Form W-2
U. S. TREASURY DEPARTMENT
Internal Revenue Service

STATEMENT OF INCOME TAX WITHHELD ON WAGES
By Employer
(EMPLOYEE'S RECEIPT)

Calendar Year
1943

INSTRUCTIONS TO EMPLOYER

Prepare this form in duplicate for each employee from whom a tax has been withheld. Furnish or plead to employee. Forward duplicate, with Statement of Income Tax Withheld on Wages, Form W-2, for the fourth quarter of the year (or with the employee's final return, if filed at an earlier date). (See Circular W-2.)

INSTRUCTIONS TO EMPLOYEE

This is your receipt for Income Tax (including Victory Tax) withheld. You should keep it for use in preparing your Income and Victory Tax return for 1943, and as evidence of tax withheld.

EMPLOYER TO WHOM PAID: DAVID LUBBEN 325-05-3229
Cincinnati Club,
Cincinnati, Ohio

(Print full name of employee, home address, and social security number, if any. If employee is a married woman, name of husband should also be furnished)

EMPLOYER BY WHOM PAID:

(Name and address of employer)

STATEMENT OF INCOME TAX WITHHELD ON WAGES

Wages paid during the calendar year 1943 ..... $2,000.00

Amount of income tax withheld ..... $ 88.00

16—54349-1

(over)

[fol. 188]

DEFENDANTS' EXHIBIT 5

AGREEMENT

This Agreement dated the day of January, 1945, by and between BURRY BISCUIT CORPORATION, a Delaware Corporation, and MRS. L. M. PETERSON & CO., INC., a New York Corporation, hereinafter called First Party, and David G. Lubben, individually and trading and doing business as EATSUM FOOD PRODUCTS CO., hereinafter called Second Party,

WITNESSETH:

Whereas the Second Party and Mrs. L. M. Peterson & Co., Inc., entered into a certain agreement dated June 1, 1943 whereby said corporation agreed to extend credit to the Second Party for a percentage of the profits earned by the Second Party, and

Whereas said corporation and the Second Party on April 8, 1944 cancelled said agreement and consented to and agreed upon certain sums of money as being a true statement of the account between them, and

Whereas Mrs. L. M. Peterson & Co., Inc. is a wholly owned subsidiary of Burry Biscuit Corporation and as a consequence of said agreement and the termination thereof certain credits and liabilities may accrue to said parent corporation, and

Whereas the First Party and the Second Party are desirous of disposing of all questions of liability and credits existing between them.

NOW THEREFORE, for and in consideration of the mutual covenants herein contained and for and in consideration of the sum of one dollar and other good and valuable consideration, in hand paid by the First Party to the Second Party, and in hand paid by the Second Party to the First Party, the receipt whereof and the sufficiency

of which is hereby mutually acknowledged, the parties hereto agree as follows:

[fol. 189] 1. That the balance owing to Mrs. L. M. Peterson & Co., Inc. on April 8, 1944 amounted to $138,587.25, representing the net balance due Mrs. L. M. Peterson & Co., Inc. for advances and sales on credit and the percentage of profits payable under the agreement of June 1, 1943, the same being $71,592.33, less payments made thereon. Settlement of said balance was received from the Second Party during the period from April 8, 1944 to August 22, 1944 as follows:

(a) Cash received from Lubben customers	$ 59,753.52
(b) Cash received from David G. Lubben	48,973.46
(c) Merchandise received	4,698.88
(d) Sundry credits and adjustments	4,754.01
(e) J. T. Bond & Associates note *	20,407.38
TOTAL	$138,587.25

* Subsequently by agreement $11,246.21 of this note was charged back to David G. Lubben current account.

2. The First Party hereby releases the Second Party and the Second Party hereby releases the First Party from all liability of whatever nature or description which did, may, might, or could accrue to either of the parties hereto as a consequence of the agreement heretofore mentioned.

3. This mutual release is not intended to and does not in any manner effect transactions between any of the parties hereto entered into subsequent to April 8, 1944 and which now constitute a current account between the parties hereto or any of them.

IN WITNESS WHEREOF the First Party has caused its proper officers to sign, seal and deliver this release and [fol. 190] the Second Party has signed and sealed and de-

livered this release, all on the day and year first above written.

BURRY BISCUIT CORPORATION

BY /s/ GEORGE BURRY

President

Seal

ATTEST: /s/ ABIGAIL NORMAN

MRS. L. M. PETERSON & CO., INC.

BY /s/ GEORGE BURRY

Seal.

ATTEST: /s/ ROY HANKERMEYER

/s/ DAVID G. LUBBEN

DAVID G. LUBBEN, individually and trading and doing business as EATSUM FOOD PRODUCTS CO.

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DEFENDANTS' EXHIBIT 6

EXHIBIT "A"

[illegible] FOOD PRODUCTS CO.

BALANCE SHEET
APRIL 30, 1945

ASSETS

Cash - Manufacturers Trust	$ 10,148.76	
- Corn Exchange Bank	1,466.97	
- on Hand	150.00	
Accounts Receivable - Assigned	275,631.77	
- Unassigned	12,[illegible]	
Reserve for Discounts, etc.	4,[illegible]	
Inventories - Merchandise	102,[illegible]	
Equipment	53,760.42	
Reserve for Depreciation	4,275.00	
Deposits Receivable	4,[illegible]	
TOTAL ASSETS		$[illegible]

LIABILITIES

Accounts Payable	$ 84,191.[illegible]	
Loans Payable - U C A Co.	203,404.[illegible]	
Accruals - Commissions, Payroll, etc.	27,979.13	
Taxes withheld, etc.	3,[illegible]	
Provision for Federal Income Tax	[illegible]	
TOTAL LIABILITIES		$[illegible]
Net Worth - After Provision for Taxes		$ 67,074.[illegible]

RECONCILIATION

Capital - per books	$ 76,[illegible]	
Add: Net Profit - 4 mos.	[illegible]	
Total	[illegible]	
Less: Drawings - per books	[illegible]	
Net Worth - Before Taxes	[illegible]	
Less Provision for Taxes	[illegible]	
NET WORTH - AFTER TAXES		$ 67,074.[illegible]

David Lubben

Bernard Berce
3/4.

BERNARD BERCU & CO.
CERTIFIED PUBLIC ACCOUNTANTS
1775 BROADWAY AT 57TH ST.
NEW YORK 19, N. Y.
COLUMBUS 5 [illegible]

[illegible] FOOD PRODUCTS CO.

BALANCE SHEET
APRIL 30, 1945

ASSETS

Cash - Manufacturers Trust	[illegible]	
- Corn Exchange Bank	1,466.97	
- on Hand	150.00	
Accounts Receivable - Assigned	273,631.77	
- Unassigned	1[illegible],256.57	
Reserve for Discounts, etc.	[illegible]	
Inventories - Merchandise	102,[illegible]	
Equipment	53,760.42	
Reserve for Depreciation	[illegible]	
Deposits Receivable	4,550.00	
TOTAL ASSETS		$[illegible]9,237.[illegible]

LIABILITIES

Accounts Payable	$ 94,[illegible]1.56	
Loans Payable - U C A Co.	203,[illegible].58	
Accruals - Commissions, Payroll, etc.	27,979.13	
Taxes withheld, etc.	3,537.6[illegible]	
Provision for Federal Income Tax	43,000.00	
Total Liabilities		$[illegible],1[illegible].52
Net Worth - After Provision for Taxes		$ 67,074.[illegible]

RECONCILIATION

Capital - per books	$ 76,[illegible].91	
Add: Net Profit - 4 mos.	74,606.51	
Total	$151,[illegible]	
Less: Drawings - per books	41,[illegible]	
Net Worth - Before Taxes	$110,074.[illegible]	
Less Provision for Taxes	43,000.00	
Net Worth - After Taxes		$ 67,074.[illegible]

[fol. 194]

DEFENDANTS' EXHIBIT 7

[illegible] FOOD PRODUCTS CO.

STATEMENT OF INCOME, PROFIT AND LOSS

	JUNE 1 - DECEMBER 31, 1945			MONTH OF DECEMBER, 1945		
Sales:						
Corn Syrup						
Jones and Jellies						
Other						
Total Sales		$3,569,017.94			$ 207,591.71	
Less: Discounts	$ 16,427.85			$ 4,135.78		
Returns and Allowances	12,083.95	28,511.80		18.03	4,153.81	
Income from Sales			$3,540,506.14			$ 203,437.90
Add: Commissions Received			7,054.26			772.97
Total Income			$3,547,560.40			$ 204,210.87
Cost of Sales:						
Opening Inventory		$ 77,905.65				
Purchases	$2,779,670.42				$ 154,349.77	
Discounts and Allowances	25,724.84				2,[illegible]	
Factory Payroll	115,506.81	2,871,472.39			18,099.14	
Total Stock Available		$2,949,378.04			$ 169,843.26	
Less: Closing Inventory		-			-	
Cost of Sales			$2,949,378.04			$ 169,843.26
GROSS PROFIT ON SALES			$ 598,182.36			$ 34,367.61
Deductions:						
Factory Expenses - Schedule 1		$ 26,419.68			$ 4,723.28	
Warehouse Expenses - Schedule 2		9,535.37			1,248.50	
Freight		46,630.87			7,884.36	
Sales Expenses - Schedule 3		170,933.84			23,136.16	
Office Expenses - Schedule 4		129,788.37			20,360.91	
Depreciation		4,148.84			633.68	
Total Deductions			$ 387,456.97			$ 57,996.89
NET PROFIT FOR PERIOD - STRUCT INVENTORIES			$ 210,725.39			23,619.28

EXHIBIT "B"

BERNARD BERCU & CO.
CERTIFIED PUBLIC ACCOUNTANTS.

[fol. 196]

Defendants' Exhibit 8A

The chairman called for the nomination of officers. Thereupon the following persons were nominated for officers of the corporation, to serve for the term provided in the by-laws:

President	James Moran, 1932 N. Nashville St., Chicago, Ill.
Vice-President	Samuel Gertz, 647 W. Buckingham Pl., Chicago, Ill.
Secretary) Treasurer)	Edward T. Urban, 2739 Lincoln St., Evanston, Ill.

No further nominations being made the nominations were closed and the directors proceeded to vote on the nominees. All of the directors present at the meeting having voted and the vote having been counted, the chairman announced the aforesaid nominees had been duly elected to the offices set before their respective names, by the affirmative vote of all directors of the corporation present at the meeting, to serve for the term provided in the by-laws.

The secretary of the meeting then presented a seal conforming to the provisions of the by-laws, said seal making the following imprint:

[Corporate Seal]

Thereupon, on motion duly made and seconded, the following resolution was unanimously adopted:

> RESOLVED that the seal presented to this meeting be and it hereby is adopted as the seal of this corporation.

[fol. 197]

DEFENDANTS' EXHIBIT 8B

The secretary then presented to the meeting a form of certificate for shares of the corporation.

Thereupon, on motion duly made and seconded, the following resolution was unanimously adopted:

> RESOLVED that the certificates to represent the shares of this corporation shall be in the form of the specimen certificate presented to this meeting, and said specimen certificate shall be inserted in the Minute Book of this corporation immediately following the minutes of this meeting.

The chairman then stated to the meeting that prior to the filing of the Articles of Incorporation in the Office of the Secretary of State, subscriptions to the shares of the corporation had been executed as follows:

Name and Address	*Number and Class of Shares*	*Amount Subscribed*
Edward T. Urban 2739 Lincoln Street Evanston, Illinois	100 Common	$ 500.00
Janet Moran 1932 Nashville Street Chicago, Illinois	100 Common	500.00
Judy Gertz 647 W. Buckingham Place Chicago, Illinois	100 Common	500.00
Eunice L. Pepoon 135 So. La Salle Street Chicago, Illinois	1 Common	5.00

The chairman stated further that he was advised that under the laws of the State of Illinois, the filing of the Articles of Incorporation by the Secretary of State constituted acceptance

[fol. 198]

DEFENDANTS' EXHIBIT 8C

by the corporation of all existing subscriptions to its shares, and that it was in order for the board of directors to determine the time and manner of payment of such subscriptions.

The chairman further stated that subsequent to the date of said subscription agreement, EDWARD T. URBAN and DAVID G. LUBBEN had purchased the assets of HABERKORN CANDY CO. UNINCORPORATED, from the Estate of WILLIAM P. HABERKORN, Deceased, for the sum of Thirty Five Thousand Dollars ($35,000.00) cash, and in addition thereto had invested in said business, or were about to invest therein, the additional total sum of Eighteen Thousand Nine Hundred Eighty Five and 28/100ths Dollars ($18,985.28) for additional equipment and also for additional working capital, making a total capital investment in said business of Fifty Three Thousand Nine Hundred Eighty Five and 28 100ths Dollars ($53,985.28) and that said EDWARD T. URBAN and DAVID G. LUBBEN were agreeable to the transfer of all of said assets of HABERKORN CANDY CO., INC., a corporation, in consideration of the issuance to them or to their nominees of 300 shares of the stock of said corporation.

Thereupon, attention was called to the subscription of JUDY GERTZ for 100 shares of the stock of said corporation, payment for which had not been made. EDWARD T. URBAN and DAVID G. LUBBEN thereupon stated that it would be agreeable with them to have the

assets of HABERKORN CANDY CO. UNINCORPORATED, transferred to HABERKORN CANDY CO., INC., a corporation, and to have 200 shares of said stock issued to them or to their nominees and to withhold issuance of the remaining 100 shares to JUDY GERTZ or her nominee until such time as said JUDY GERTZ should reimburse said EDWARD T. URBAN and DAVID G. LUBBEN for one-third of the total capital investment above stated. This being agreeable to all concerned, the following resolution was duly made, seconded and unanimously adopted:

WHEREAS EDWARD T. URBAN, JANET MORAN and JUDY GERTZ have each subscribed for 100 shares of stock of the corporation, and;

WHEREAS EDWARD T. URBAN and DAVID G. LUBBEN have purchased the assets of HABERKORN CANDY CO. UNINCORPORATED, for Thirty-Five Thousand Dollars ($35,000.00) cash, and have invested or are about to invest the additional sum of Eighteen Thousand Nine Hundred Eighty Five and 28/100ths Dollars ($18,985.28) all such assets they propose to transfer to the corporation, subject to all liabilities of said business, in consideration of 300 shares of the stock of the corporation to be issued hereafter to said EDWARD T. URBAN and DAVID G. LUBBEN in equal amounts or to their nominees, and;

WHEREAS said EDWARD T. URBAN and DAVID G. LUBBEN are agreeable to having the issuance of 100 shares of said stock withheld until said JUDY GERTZ shall reimburse said EDWARD T. URBAN and DAVID G. LUBBEN for one-third of said total capital investment of Fifty Three Thousand Nine Hundred Eighty Five and 28/100ths Dollars ($53,985.28);

NOW, THEREFORE, BE IT RESOLVED that the proposal of EDWARD T. URBAN and DAVID G. LUBBEN to pay for issuance of 300 shares of stock of the corporation by conveying, transferring and assigning to this corporation all assets of HABERKORN CANDY CO. UNINCORPORATED, together with sufficient cash to make a • • •

[fol. 200] DEFENDANTS' EXHIBIT 9

CONTRACT OF SALE OF CAPITAL STOCK OF HABERKORN CANDY CO., INC. TO SHOTWELL MANUFACTURING COMPANY

THIS AGREEMENT made in the City of Chicago, State of Illinois, on the 24th day of February, 1948, by MARY A. URBAN and HELEN L. URBAN, both of 5804 North Artesian Avenue, Chicago, Illinois, and FLORENCE D. URBAN, of 2739 Lincoln Street, Evanston, Illinois, hereinafter referred to as "Sellers"; FRANK A. URBAN and GEORGE A. URBAN, both of 5804 North Artesian Avenue, Chicago, Illinois, and EDWARD T. URBAN, of 2739 Lincoln Street, Evanston, Illinois, hereinafter referred to as "Guarantors"; and SHOTWELL MANUFACTURING COMPANY, an Illinois corporation, with principal offices at 3501 West Potomac Street, Chicago, Illinois, hereinafter referred to as "Buyer";

WITNESSETH:

WHEREAS Sellers represent and warrant that HABERKORN CANDY CO., INC. is a corporation, duly created, organized and existing under, and by virtue of, the laws of the State of Illinois, and has an authorized capital stock of 1000 shares of common stock without par value, of which 300 shares have been issued and are now outstanding, all being fully paid and nonassessable, and all being owned by Sellers; and

WHEREAS Sellers desire to sell all of said shares of capital stock of said HABERKORN CANDY CO., INC. and Buyer desires to purchase the same; and

WHEREAS Guarantors are willing to guarantee performance of all obligations assumed hereunder by Sellers;

[fol. 201] NOW, THEREFORE, in consideration of the sum of One Hundred Dollars ($100.00) paid by the Buyer to Sellers and a like sum paid by Sellers to Guarantors, receipt of which is hereby acknowledged, and for other

good and valuable considerations it is mutually agreed as follows:

1. Sellers hereby sell, assign, transfer and set over to Buyer all of their right, title and interest in and to the said 300 shares of capital stock of HABERKORN CANDY CO., INC., an Illinois corporation, said shares comprising all of the outstanding shares of stock of said corporation.

2. Sellers represent and warranf that included in the property owned by the corporation at the time of this sale and which Buyer will acquire through purchase of said stock is all the machinery and equipment owned by said corporation as of March 31, 1947, represented in said HABERKORN CANDY CO., INC.'S balance sheet as of that date at a value of $45,212.58 and in addition thereto all machinery and equipment purchased or acquired by said corporation between said March 31, 1947 and February 12, 1948.

3. Sellers guarantee to buyer that the following listed assets of HABERKORN CANDY CO., INC., as of the close of business February 10, 1948, were as follows:

Cash in Bank	$ 6,200.00
Accounts receivable from regular customers	24,200.00
Account receivable from a Mr. Bergin	1,475.00
Inventory of raw materials at invoice price, together with finished goods priced	
[fol. 202] Brought Forward	$31,875.00
as per Schedule attached hereto	30,000.00
Total	61,875.00

4. Sellers further guarantee that as of the close of business, on February 10, 1948, the following listed liabilities of HABERKORN CANDY CO., INC. did not exceed the following amounts:

Accounts payable	4,000.00
February rent	225.00
Salesmens' commissions for January & February, 1948	1,600.00
Unpaid payroll as of February 10, 1948	1,200.00
Invoice for recent sugar shipments	800.00
Total	7,825.00

5. Sellers represent and warrant unto Buyer that all assets of said HABERKORN CANDY CO., INC., as of February 12, 1948, are free and clear of all liens, mortgages, conditional sales contracts or encumbrances of any kind whatsoever.

6. Sellers represent and warrant unto Buyer that as of close of business February 11, 1948 there were no claims or lawsuits in any court or before any governmental agency now pending against HABERKORN CANDY CO., INC. and that Sellers know of no such claim now outstanding which could be filed in any court or before any governmental agency against said corporation.

7. Sellers represent and warrant that as of the close of business February 11, 1948, said HABERKORN [fol. 203] CANDY CO., INC. had outstanding no contracts for the purchase of raw materials except an order heretofore placed with WALTER BAKER CHOCOLATE COMPANY, of Boston, Massachusetts, for 20,000 pounds of chocolate coating, at approximately 41¢ per pound, f.o.b. Boston, Massachusetts.

8. Sellers represent that the premises now occupied by said HABERKORN CANDY CO., INC., at 1152 West Polk Street, Chicago, Illinois, are occupied by virtue of a written lease heretofore submitted to Buyer for examination and under which lease a monthly rental is charged in the amount of $225.00 for the duration of the lease, as extended, expiring April 30, 1950.

9. Sellers agree to deliver to Buyer and Buyer agrees to accept possession of said leased premises

and the entire business of said HABERKORN CANDY CO., INC. as of midnight February 11, 1948, Buyer to assume complete control of the management of said business on February 12, 1948, and to be completely responsible for the operation of said business from that date forward.

10. Sellers and Guarantors agree to execute all documents necessary to complete the transfer and delivery to Buyer of all said outstanding shares of stock of said HABERKORN CANDY CO., INC. and all books and records relating to the business of said corporation. Sellers and Guarantors further agree that Buyer will be furnished written resignations of all officers and directors of said corporation.

[fol. 204] 11. Sellers and Guarantors represent that on February 11, 1948, Sellers purchased from JANET MORAN, wife of JAMES MORAN and sister of DAVID G. LUBBEN, 150 shares of the outstanding stock of HABERKORN CANDY CO., INC. for the sum of $32,500.00, which sum of money said JANET MORAN delivered on said date to said DAVID G. LUBBEN who thereupon declared his intention and did agree to pay $30,000.00 of said amount to SHOTWELL MANUFACTURING COMPANY or its agent, it being understood and agreed among the parties hereto that payment by LUBBEN of said $30,000.00 to Buyer is a condition precedent to the consummation of the sale of stock set forth herein.

12. Buyer agrees to pay the Federal Stock Transfer Tax incurred by virtue of the sale of stock agreed upon herein.

PAYMENT OF PURCHASE PRICE

13. Buyer agrees to pay Sellers the total sum of $65,000.00 in cash to be paid in the following manner:

(a) $10,000.00 in cash as earnest money, upon execution of a memorandum agreement and the delivery of possession of said premises as of February 12, 1948.

(b) $55,000.00 in cash upon the execution and delivery of this contract.

TERMS OF GUARANTY

14. FRANK A. URBAN, EDWARD T. URBAN and GEORGE A. URBAN, herein referred to as Guarantors, do hereby jointly and severally guarantee per- [fol. 205] formance by Sellers of all obligations assumed by Sellers by virtue of this contract and guarantee that the value of the assets listed in Paragraph 3 above, as of the close of business February 10, 1948, was no less than the amounts set forth in said Paragraph 3, and that the amounts of the liabilities listed in Paragraph 4 hereof, as of the close of business February 10, 1948, were no greater than the amounts set forth in said Paragraph 4.

15. All parties hereto agree that an inventory of machinery and equipment, raw materials and finished goods shall be taken immediately after Buyer takes possession of said premises and a copy of said inventory shall be furnished to Sellers, or in lieu of said copy, Sellers shall have the right to examine and copy said inventory. It is further agreed that Buyer shall audit the books and records of said HABERKORN CANDY CO., INC., said audit to be completed within a maximum of sixty (60) days from February 12, 1948. By virtue of said inventory and said audit Buyer shall determine within said sixty (60) day period from February 12, 1948, the value of the assets listed in Paragraph 3 above and the amounts of the liabilities listed in Paragraph 4 hereof and Buyer shall notify Sellers in writing of the amounts so determined. In fixing the value of finished goods, the Schedule of Prices attached to this contract and incorporated herein by [fol. 206] reference, shall be used. Should the total value of said assets fall below the total of the amounts stated in said Paragraph 3, and the total amount of liabilities exceed the total amount stated in said Paragraph 4, Sellers agree to pay to Buyer the amount of said deficiency within ten (10) days after receiving written notice thereof.

16. Guarantors agree that should Sellers fail to pay any such deficiency as described in Paragraph 15 above, Guarantors shall pay the same; and in order to secure such payment, Guarantors agree to deposit with an escrowee to be selected by Attorneys HAROLD A. SULLIVAN and JOHN R. PORTER a $10,000.00 United States Government Negotiable Bond, together with written instructions for said escrowee to use said $10,000.00 deposit for the purposes of indemnifying Buyer against any failure by Sellers to pay to Buyer any such deficiency as above described. Said escrowee shall only make such payments from said escrow funds as shall be jointly authorized by said attorneys, said escrow to be established at the time of the signing hereof. Should said attorneys be unable to agree on a joint authorization of payment, they shall jointly name a third party to act as arbitrator of the question, and all parties hereto agree to be bound by decision of said arbitrator in the premises.

17. This agreement shall be binding upon the heirs, [fol. 207] executors, administrators and assigns of Sellers and Guarantors, and upon the successors and assigns of Buyer.

/s/ Helen L. Urban
/s/ Florence Urban
/s/ Mary A. Urban
Sellers

/s/ Frank Urban
/s/ Edw. L. Urban
/s/ George A. Urban
Guarantors

Shotwell Manufacturing Company,
a corporation

By /s/ Frank J. Huebner
Vice President

ATTEST:

/s/ H. S. Graflund
Secretary

(Corporate Seal)

[fol. 208]

SCHEDULE OF PRICES FOR FINISHED GOODS

5 lb.	Boxes Dark Cherries	$ .48	per lb.
5 lb.	Boxes Dark Assorted Creams	.35	per lb.
12 oz.	Boxes Haberkorn Peppermints	10.20	per case of 36.
2 lb.	Tins Camille Chocolates	10.08	per dozen
1 lb.	Camille Chocolates	5.04	per dozen
	Chocolate Marshmallow Eggs	2.20	per dozen
	Cherry Cream Eggs	.60	per dozen
	Cherry Cream Eggs—Unwrapped	.50	per dozen

CONTRACT OF SALE OF CAPITAL STOCK OF HABERKORN CANDY CO., INC. TO SHOTWELL MANUFACTURING COMPANY.

LAW OFFICES
ECKERT & PETERSON
135 SOUTH LA SALLE STREET
CHICAGO 3

TELEPHONE DEARBORN 8520

[fol. 210]

DEFENDANTS' EXHIBIT 10

THIS AGREEMENT, made at the City of New York, on the 4th day of June, 1946, between EATSUM FOOD PRODUCTS COMPANY and WILLIAM J. GIGLIO, hereinafter referred to as the "Seller", and GENERAL CONFECTIONS, INC., a New York Corporation, and DAVID G. LUBBEN, hereinafter referred to as the "Purchaser".

WITNESSETH:

The Purchaser desires to acquire from the Seller and the Seller desires to sell and to confirm the sale to the Purchaser of the articles hereinafter referred to on the terms set forth below.

In consideration of these premises and of the mutual covenants here made, it is agreed:

1. The Seller hereby sells to the Purchaser, and the Purchaser hereby buys from the Seller the properties, heretofore owned by Eatsum Food Products Company, more particularly described on Schedule A annexed hereto, consisting of its entire inventory and the particulars of prepaid accounts, deposits receivable, stock and prepaid life insurance, etc., set forth on the annexed Schedule A. It is acknowledged that the inventory referred to as Item 1 on Schedule A hereto annexed was heretofore sold, invoiced, transferred and conveyed by Eatsum Food Products Company to General Confections, Inc. and insofar as said item is concerned, this agreement ratifies the said sale and if there be any informality or defect in the said sale, corrects the same.

2. The Seller Giglio represents that all of the terms specified on Schedule A annexed hereto were lawfully and properly acquired by him upon dissolution of Eatsum Food

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[fol. 211] RIDER TO PARAGRAPH 4.

Under the agreement by which EATSUM FOOD PRODUCTS COMPANY was dissolved made on even date herewith, the benefit of the proceeds of all of the assets here-

in referred to has been transferred to WILLIAM J. GIGLIO and all of the payments to be made hereunder shall be made to WILLIAM J. GIGLIO.

—•—

Products Company as his share of the assets as a general partner thereof and that he has done nothing to create any liens, encumbrances, defenses or offsets against them or any of them or any defect or limitation of his absolute title thereto.

3. The purchase price for the said items appearing upon Schedule A annexed hereto is made up of the values set by the parties to each of the said items as such values appear opposite each item on Schedule A annexed hereto, the total of such values being $339,052.77.

4. The Seller acknowledges that he has received on account of the said purchase price the sum of $165,775.10. The Purchaser agrees to pay the balance of the purchase price consisting of the sum of $173,277.67 in the manner following:

(a) $75,000.00 in cash or by certified check or official check of a New York bank at the time of the delivery of the bill of sale hereinafter referred to;

(b) The balance of $98,277.67 by forty notes of the purchaser payable to the order of the Seller Giglio, the first thirty-nine of which shall be in the sum of $2,500.00 each and the fortieth of which shall be in the sum of $777.67, one of said notes to be payable on August 2nd, 1946, and one of said notes to be payable on the Friday of each week thereafter until the full sum has been paid. In the event the Purchaser shall default in the payment of any of said [fol. 212] notes and said default shall continue for at least ten (10) days after written notice thereof given by the Seller to the Purchaser, the unpaid balance thereof shall be and become immediately due and payable at the option of the Seller provided the Seller give written notice to the Purchaser of the exercise of said option.

5. The Seller shall execute in due form and deliver to the Purchaser an instrument, or instruments, transferring, setting over and assigning to GENERAL CONFECTIONS, INC. full and absolute title to the assets specified on Schedule A annexed hereto and hereby warrants, such warranties to survive the delivery of the said instruments, that Giglio has not done, and will not do, either directly or through the agency of others, anything whatsoever to prevent full and unrestricted title to all of the said articles to pass by such instruments to the Purchaser nor has he in any manner, directly or indirectly, encumbered the same either by lien or restrictive covenants or permitted the same so to be encumbered. Such instruments shall be in form satisfactory to counsel for the Purchaser and shall be delivered to the Purchaser, against payment as aforesaid, at the office of Bondy & Schloss, 285 Madison Avenue, Borough of Manhattan, City of New York, on the 5th day of June, 1946. The Seller agrees that he will execute and deliver any additional documents that may be necessary to effectuate the transfers herein provided for and the enjoyment thereof by the Purchaser.

6. This agreement shall bind the parties and their respective heirs, personal representatives, successors and assigns. It shall not be changed or amended orally.

[fol. 213] IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

WITNESS:

..... /s/ William Giglio
William J. Giglio

ATTEST: General Confections, Inc.

/s/ Roy Hankermeyer By /s/ David Lubben

WITNESS:

..... /s/ David Lubben
David G. Lubben

[fol. 215]

DEFENDANTS' EXHIBIT 11

EXHIBIT "A"

[illegible] FOOD PRODUCTS CO.

BALANCE SHEET
APRIL 30, 1945

ASSETS		
Cash - Manufacturers Trust	$ 10,1[illegible]	
- Corn Exchange Bank	1,[illegible]	
- on Hand	150.00	
Accounts Receivable - Assigned	275,[illegible]	
- Unassigned	12,[illegible]	
Reserve for Discounts, etc.	4,[illegible]	
Inventories - Merchandise	102,[illegible]	
Equipment	53,[illegible]	
Reserve for Depreciation	4,[illegible]	
Deposits Receivable	4,[illegible]	
TOTAL ASSETS		$[illegible]
LIABILITIES		
Accounts Payable	$ 64,[illegible]	
Loans Payable - G C A Co.	203,[illegible]	
Accruals - Commissions, Payroll, etc.	27,[illegible]	
Taxes withheld, etc.	3,[illegible]	
Provision for Federal Income Tax	43,000.00	
TOTAL LIABILITIES		$362,[illegible]
Net Worth - After Provision for Taxes		$ 67,074.[illegible]
RECONCILIATION		
Capital - per books	$ [illegible]	
Add: Net Profit - 4 mos.	[illegible]	
Total	$[illegible]	
Less: Drawings - per books	[illegible]	
Net Worth - Before Taxes	$[illegible]	
Less Provision for Taxes	43,000.00	
NET WORTH - AFTER TAXES		$ 67,074.[illegible]

David Lubber

Bernard Berc
[illegible]

BERNARD BERCU & CO.
CERTIFIED PUBLIC ACCOUNTANTS
1775 BROADWAY AT 57TH ST.
NEW YORK 19, N. Y.
COLUMBUS 5-[illegible]

EATSUM FOOD PRODUCTS CO.

BALANCE SHEET
APRIL 30, 1945

ASSETS		
Cash - Manufacturers Trust	[illegible]	
- Corn Exchange Bank	1,[illegible]	
- on Hand	150.00	
Accounts Receivable - Assigned	273,[illegible]	
- Unassigned	1[illegible]	
Reserve for Discounts, etc.	[illegible]	
Inventories - Merchandise	102,[illegible]	
Equipment	53,[illegible]	
Reserve for Depreciation	[illegible]	
Deposits Receivable	4,[illegible]	
TOTAL ASSETS		$[illegible]
LIABILITIES		
Accounts Payable	$ [illegible]	
Loans Payable - G C A Co.	203,[illegible]	
Accruals - Commissions, Payroll, etc.	27,[illegible]	
Taxes withheld, etc.	3,[illegible]	
Provision for Federal Income Tax	43,000.00	
Total Liabilities		$362,[illegible]
Net Worth - After Provision for Taxes		$ 67,074.[illegible]
RECONCILIATION		
Capital - per books	$ [illegible]	
Add: Net Profit - 4 mos.	[illegible]	
Total	$151,[illegible]	
Less: Drawings - per books	[illegible]	
Net Worth - Before Taxes	$110,[illegible]	
Less Provision for Taxes	43,000.00	
Net Worth - After Taxes		$ 67,074.[illegible]

[fol. 217]

DEFENDANTS' EXHIBIT 12

THIS CHECK IS IN SETTLEMENT OF THE FOLLOWING INVOICES

DATE		AMOUNT
TOTAL OF INVOICES		
TOTAL DEDUCTIONS		
AMOUNT OF CHECK		

IF INCORRECT, PLEASE RETURN
NO RECEIPT NECESSARY.

New account

EATSUM FOOD PRODUCTS COMPANY
1941 BROADWAY

No. 4615 14

NEW YORK 6/14 1945

PAY TO THE ORDER OF Eatsum Food Products Co. — $67,000.00

THE SUM [illegible] DOL'S [illegible] CTS DOLLARS

MANUFACTURERS TRUST COMPANY
1919 BROADWAY
NEW YORK

1-30

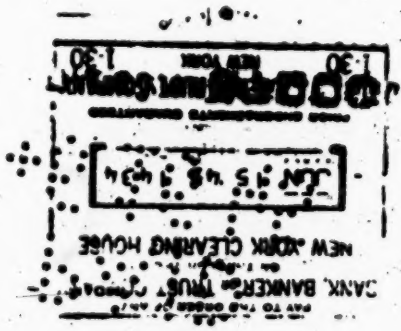
David Lubben
William Biglia
AUTHORIZED SIGNATURE

Endorsed to the Eatsum Food Prod. Co.

1-30 NEW YORK 1-30

JUN 15 '45 1 4 3 4

BANK, BANKERS TRUST COMPANY
NEW YORK CLEARING HOUSE



[fol. 219]

DEFENDANTS' EXHIBIT 13

CHECKS
CC-Certified Checks
BN-Debit Memo
RT-Returned Item
LST-List

Eatsum Food Products Co.
1841 Broadway,
New York, 23, N.Y.

HOLD

DEPOSITS
CC-Collections
L-Loans - Discount
RT-Credit Memo

IN ACCOUNT WITH

MANUFACTURERS TRUST COMPANY

NEW YORK

SUBJECT TO TERMS ON REVERSE SIDE

NOTIFY US PROMPTLY OF CHANGE IN ADDRESS

DATE	CHECKS			DATE	DEPOSITS
	BALANCE BROUGHT FORWARD				
JUN 15 '45	53,500.00			JUN 15 '45	67,000.00
JUN 16 '45	2,439.16	7,411.42	4,023.39		
JUN 16 '45	5,032.22	2,508.80			
JUN 18 '45	4,817.78	12,888.52	534.10		
JUN 18 '45	79.10	2,885.12			
JUN 19 '45	9.60	2.40			
JUN 20 '45	17.85	7.58			
JUN 21 '45	14.71				
JUN 23 '45	8.10	27.20			
JUN 25 '45	136.00	17.10			
JUN 28 '45	6.00	4.00			

JUN 30 1945

BALANCE 2639.14

PLEASE EXAMINE STATEMENT OF ACCOUNT AND VOUCHERS AT ONCE

ERRORS SHOULD BE REPORTED WITHIN TEN DAYS; OTHERWISE THIS STATEMENT OF ACCOUNT WILL BE CONSIDERED CORRECT.

OVER

CHECKS
CC-Certified Checks
BN-Debit Memo
RT-Returned Item
LST-List

Eatsum Food Products Company
1841 Broadway
New York, 23, N.Y.

HOLD

DEPOSITS
CC-Collections
L-Loans - Discount
RT-Credit Memo

IN ACCOUNT WITH

MANUFACTURERS TRUST COMPANY

NEW YORK

SUBJECT TO TERMS ON REVERSE SIDE

NOTIFY US PROMPTLY OF CHANGE IN ADDRESS

DATE	CHECKS			DATE	DEPOSITS
	BALANCE BROUGHT FORWARD			31 '45	47,771.23
1 '45	3,549.55 LST 29	1,981.95	1,756.80		
1 '45	1,000.00	3,012.91			
1 '45	34.72	831.10		1 '45	710.92
2 '45	3,675.29 LST 14	41.43	3,000.00		
2 '45	1,376.51				15049.56
4 '45				4 '45	15,049.75
4 '45	4,259.59 LST 8	4,352.00	4,038.40		15044.17
4 '45	4,195.20	1,047.82	4,791.54		8.39
5 '45	51.30	186.10	15.67		40.51
5 '45	8.79	300.00	320.90		
5 '45	3,600.00	1,850.00		5 '45	4,545.40
6 '45	4.87	120.00	.76		
6 '45	154.16	83.30	1,925.00	6 '45	4,504.64
6 '45				6 '45	17,684.21
7 '45	4,022.85 LST 8	3.30	1,152.00		
7 '45	2,052.92	4,500.00	1,098.00		
7 '45	4,717.97				
8 EX	4,942.32 ST 14	4,249.95			
8 '45	7.56	973.32	100.00		
8 '45	384.00	51.30		8 '45	252.35
8 '45				8 '45	4,784.0
9 '45	1,787.49 LST 8	1,075.00	1,850.00		
JUN 11 '45	839.33 LST 11	2,217.95		JUN 11 '45	6,644.6
JUN 12 '45	48.56	72.40	50.00		
JUN 12 '45	181.76			JUN 12 '45	912.1
JUN 13 '45	2,108.96 LST 12	8.95	250.00		
JUN 13 '45	11.18	1,350.00	4,650.00	JUN 13 '45	15,757.7
JUN 13 '45				JUN 13 '45	8,309.6
JUN 14 '45	3,485.59 LST 21	1,692.97	3,417.22		
JUN 14 '45	3,504.04	3,450.00	1,230.82		
JUN 14 '45	2,950.48	13,500.00		JUN 14 '45	
JUN 15 EX	.80	1.13	987.69		
JUN 15 EX	53.95	241.79	56.72		

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BALANCE

PLEASE EXAMINE STATEMENT OF ACCOUNT AND VOUCHERS AT ONCE

ERRORS SHOULD BE REPORTED WITHIN TEN DAYS; OTHERWISE THIS STATEMENT OF ACCOUNT WILL BE CONSIDERED CORRECT.

OVER

Corn Box.

Money Paid Out

Nov	30	L. Cohen 94428 lbs - Unloading fee	944 28
Dec	3	Paid to Frankie for money due him	97 00
Dec	3	Paid to Miss Feldman for open invoice on books. Frankie collected invoice in cash and did not pay Miss Feldman. I gave her	2165 35
Dec	3	Paid Miss Feldman $200 for money Frankie owed her on shortage	200 00
Dec	6	L. Heller - 2500 lbs Caramels .30 lb	750 00
"	6	" " 900 lbs Hard Candy. 10 average	90 00
Dec	7	Paid to Carey for balance due on #5	200 00
"	10	Bal due on Ryan deal	1000 00
			5446 63

Corn Bof
Money Taken In

Feb	26	Mike Cohen	#39555 – 10093 lbs 5½	555 12
"	26	" "	#39587 – 47077 lbs – 5½	2639 24
"	"	" "	#39676 – 20104 lbs – 5½	1105 72
"	26	" "	#39659 – 45384 lbs – 5½	2546 12

3624278

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DEFENDANTS' EXHIBIT 15A

Date	Name	Car #	Weight	Amount Price	
			5496764		
10/5	Cohen		33192	215748	18515 82
10/9	Mateo		15328	102552	370 54
10/13	Cohen		14023	65135	551 25
10/20	Gomm	BAK 30417	57150	349377	2913 90
10/23	Gomm		57699	381511	3228 17
10/23	Herbert		16955	110207	933 52
10/27	Brown	Bill 707345	58526	380919	3218 93
					30265684

Weight — Cost

Weight	Cost
37473.76	198267.75
5776	25994 7
5305	29180 8
5762	31693 8
3350	18428 3
3303	18166 5
5756	31658 6
5772	31749 9
3325	18273 8
5297	23840 6
5399	23981 4
2000	11000 5
1685	9269 P
9632	46160 0
5354	24093 0
5346	29403 6
3399	18313 9
3304	18177 0
1659	9129 6
5261	28939 9
5357	29467 4
2001	11009 4
1353	7441 5
3343	18386 5
3333	18344 P
1674	9209 P
1683	9261 5
2001	11010 5
1250	6877 8
3335	18342 5
5553	30542 1
5845	32148 0
5693	31312 6
3321	18279 P
1276	7019 1
1553	8542 1
5883	32360 9
1002	5513 P
5793	31862 6
1624	8936
647	3562 3
3274	18009 P
3337	18353 5
9572	33502 0
5326	23968 4
3396	18367 8
	18225 6
54967.64	8704
	5512 5
	29139 0
	32281 7
	9335 P
	32189 3
	302656.84

54967.64
3319 P
1582 8
1002 3
5298 0
5869 4
1695 5
5852 6
57429 P

[fol. 226]

Received from Sam Krane

4/1/53

[fol. 227]

DEFENDANTS' EXHIBIT 15B

Hubinger

CAR NUMBER	NET WEIGHT RECEIVED	WEIGHT LOST IN PROCESSING	NET WEIGHT	INVOICE NUMBER	CUSTOMER	NET WEIGHT BILLED	AMOUNT		
GATX 4247	95740	399	95341	31348	Commodity Trading	53263	3462.10	5%	239634
				31375	Charles Bunn	20017	1301.11	5%	110094
				31429	Charles Bunn	12505	812.85	5%	68778
GATX 4141	95600	395	95205	31302	Energy Food Co.	20001	1300.07	5%	110005
				31301	Waldies Chod.	16853	1095.45	5%	92690
				31343 [illegible]	Charles Bunn	33430	2172.95	5%	183813
GATX 7386	95140	399	94751	31532	Commodity Trading	555	36.07	5%	3052
				31539	Commodity Trading	1974	128.31	5%	35799
				31540	Commodity Trading	6509	423.08	5%	10857
				31541	L. Heller	33049	2148.19	5%	181770
				31542	L. Heller	33298	2164.37	5%	183139
				31543	L. Heller	16592	1078.48	5%	91256
GATX 24676	94840			33514	Commodity Trading	27896	1813.24		153428
					Eatsum Food	34964	2272.87		
							480978.31		
Totals	341320					310966	20209.14		1464419
							501187.45		394532.14
									409176.33

Cost calc. [illegible]

394532.14
239634
110094
68778
110005
92692
183868
3
3052
35799
10857
181770
183139
91256
153428
1464419
394532.14
409176.33

Billed Price
480978.31
20209.14
501187.45

Received from Sam Krane

4/1/53

[fol. 229]

DEFENDANTS' EXHIBIT 15C

Page 5

CAR NUMBER	NET WEIGHT RECEIVED	WEIGHT LOST IN PROCESSING	NET WEIGHT	INVOICE NUMBER	CUSTOMER	NET WEIGHT BILLED	AMOUNT
GATX 12511	96480			31645	Commodity Trading	63466	4125.29 -
				726	Brunswerman Brkg.	33402	2171.13 -
GATX 12178	95720	393	95327	32730	Charles Baum	35694	2320.11 -
				868	Mike Cohen	39538	2569.97 -
				888	Charles Baum	6501	422.56 -
GATX 15665	95760		95760	31404	Mike Cohen	95760	6221.80 -
				A104			
GATX 6788	96140	397	95743	32727	Commodity Trading	638	41.47 -
				799	Commodity Trading	10	65
				731	Margaret Moffett	3898	253.37 -
				891	Waloo Food	3398	220.61 -
				944	Gold Medal	22286	1448.59 -
				889	Waloo Food	16334	1061.71 -
				890	Commodity Trading	49613	3224.85 -
				798	Waloo Food	900 CR	CR 58.50
GN 13588	44953		44953	33025	Consolidated Syrup	44953	2921.95
GATX 15906	96020			33876	Delson Candy	32202	2093.13 -
				875	Gold Medal	17866	1161.29 -
				874	Gold Medal	32103	2086.70 -
				886	Waldies Choc.	19350	1257.75 -
GATX 12052	95380		95380	33250	Commodity Trading	95380	5245.90 -
GATX 7287	95600			32839	Commodity Trading	16519	1073.74 -
				841	Charles Baum	27912	1814.28 -
				840	Herbert Co.	16432	1068.08 -
				842	Jack Sens	32268	2097.82 -
				33906	Herbert Co.	205 CR	CR 13.19
CNW 41528	56609			33518	Waldies Choc.	16264	1057.16 -
				519	Herbert Co.	32535	2114.78 -
Totals	7453679					735612	48097821

3570597.5
749063
183711
196317
217459
35755
125020
3509
18667
125573
89837
72878
177111
176567
98263
106425
524590
90855
89260
177474
153516
94552
178943

39453P14
39453P14

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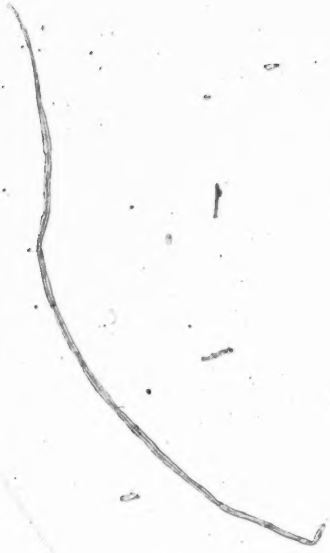
4/1/53



[fol. 231]

DEFENDANTS' EXHIBIT 15D

				394							
						31688	Charles Bean	17466	1141.79		
						31662	P.F.Syrup Co.	21762	829.53		
						31691	Peter Doelger Brwg.	6877	421.00		
						31690	Gold Medal Cdy Co.	33423	2272.50		
						31689	Charles Bean	33370	2169.05		
						31960	Commodity Trading	57673	3748.25		
						31687	Commodity Trading	58694	3815.11		
						111	Charles Bean	58526	3804.19		
						112	Charles Bean	58084	3775.46		
						114	Commodity Trading	56659	3682.83		
						110	Wilco Foods	95680	5262.40		
						113	Commodity Trading	57230	3719.95		
						4318	Wilco Foods	32933	2140.65		
						31587	Grapette Bottling	53389	3469.89		
						31692	Mike Cohen	10028	651.56		
						31728	Penn Syrup Corp.	57932	3765.58		
						31726	Charles Bean	58032	3824.08		
				393		31698	Wilkins Chvr.	16556	1063.14		
						31691	Peter Doelger	26770	1740.05		
						31690	Peter Doelger	6516	423.54		
						31954	L. Heller	33234	2160.21		
						31955	Mill Made Syrup	13352	867.88		
						31727	Commodity Trading	57188	3717.22		
						3172-	Herbert Co.	16955	1102.07		
						31725	Penny Food Co.	20207	1313.46		
						31813	Charles Bean	22685	1474.53		
						31958	Mike Cohen	95660	5261.30		
						31699	Consolidated Syrup	58335	3804.79		
						3171-	Commodity Trading	57947	3766.56		
						3169-	Commodity Trading	33435	2171.90		
						31696	Wilkins Foods	9684	629.46		
						31693	Wilkins Foods	6722	436.93		
						31695	Bottlers Supply Co.	20288	1963.52		
						31697	W.L. Syrup	13274	862.81		
						31959	Mike Cohen	95680	5278.90		
						31731	Commodity Trading	57684	3749.46		
						31729	Commodity Trading	58432	3797.43		
						31698	Wilkins Chvr.	33818	2139.27		
						31959	Mike Cohen	1505	97.95		
						31732	Wilkins Tx Foods	24548	1068.62		
						31954	L. Heller	7283	487.81		
						31955	L. Heller	8892	595.36		
						31694	Wilkins Foods	8988	601.90		
						31697	Commodity Trading	4973	333.09		
						31700	Mike Wilkins	3972	265.92		
						31954	L. Heller	28975	1885.87		

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DEFENDANTS' EXHIBIT 15E

Page 3

CAR NUMBER	NET WEIGHT RECEIVED	WEIGHT LOST IN PROCESSING	NET WEIGHT	INVOICE NUMBER	CUSTOMER	NET WEIGHT BILLED	AMOUNT	
[illegible]	58503		58503	30952	Bruckerman Brkg.	58503	3802.70	5% 321767
[illegible]	58297		58297	30953	Bruckerman Brkg.	58297	3789.31	5% 3206.34
GATX 12511	96460	391	96069	31032	Walco Foods	53292	3463.98	5% 539.27
				31036	Herbert Co.	9805	637.32	5% 1882.[illegible]
				31065	Charles Baum	33506	2177.89	
GATX [illegible]	96340	393	85947	31066	Walco Foods	16818	10[illegible]	5% 924.99
GATX 12[illegible]	96380	397	95983	31092	Gold Medal Cdy Co.	33225	21[illegible]	5% 1827.38
				31130	Commodity Trading Co.	53195	3457.42	5% 2925.51
				31128	Commodity Trading	53056	3448.[illegible]	5% 2918.08
				31124	Mike Cohen	657	[illegible]	
				31123	Mike Cohen	33192	2157.48	
RI 15[illegible]	55531		55531	31126	Charles Baum	55531	3609.52	5% 1825.56
L-E 13775	57625		57625	31166	Wallace Cdy Co.	57625	3745.63	5% 3054.21
GATX 15906	96140	396	95744	31129	Walco Food	53540	3480.10	5% 3169.38
				31226	Commodity Trading	10019	651.24	5% 2409.30
				31202	Charles Baum	33030	2146.95	5% 551.05
GATX 25682	96380	1896	94484	31265	Commodity Trading	53461	3474.97	5% 1816.65
				31233	Fred Dessendorf	53355	3468.08	5% 2940.36
GATX 12[illegible]	96320		96320	31227	Mike Cohen	96320	6260.80	5% 2730.53
[illegible]	52979		52979	31228	Commodity Trading	52979	3443.64	4% 4333.60
GATX 12[illegible]	96220	391	95829	31205	Waldies Chec.	6460	419.90	5% 2913.85
				31256	Walco Food	15828	1028.82	5% 355.30
				31255	Mike Cohen	10023	651.50	5% 270.54
				31150	Starch Col	13560	881.40	5% 551.25
GATX 12[illegible]	96220	391	95829	31203	Pittsburgh Brewing	53565	3481.73	5% 2946.[illegible]
				31204	Commodity Trading	33378	2169.57	5% 1835.79
				31374	Charles Baum	16839	1094.54	
				31373	Charles Baum	16744	1088.36	5% 926.15
				31376	Waldies Chec.	15531	1009.52	5% 720.92
				31372	Charles Baum	13530	879.45	5% 354.21
GATX [illegible]	95580	387	95193	31300	Commodity Trading	52980	3443.70	5% 744.15
				31254	Mike Cohen	33396	2170.74	5% 2913.90
				31344	Charles Baum	33353	2167.[illegible]	5% 1836.78
GATX [illegible]	96[illegible]	397	95843	31431	Commodity Trading	33313	2165.[illegible]	5% 1834.42
				31430	Charles Baum	31430	2167.75	5% 1832.28
				31428	Charles Baum	20019	1301.24	5% 1834.25
[illegible]	57561		57561	31165	Charles Baum	57561	3741.47	5% 1101.05
[illegible]	56932		56932	31406	Charles Baum	56932	3700.58	5% 3165.56
[illegible]	58451		58451	31405	Charles Baum	58451	3799.31	5% 3131.26
[illegible]	58838		58838	31461	Commodity Trading	58838	3824.47	5% 3214.[illegible]
GATX [illegible]	96[illegible]	610	95590	102	Commodity Trading	650	42.25	5% 3236.09
GATX [illegible]	95980	391	95589	103	Commodity Trading	[illegible]	210.99	5% 35.75
				108	Waldies Chec.	[illegible]	[illegible]	5% 175.33
				109	Walco Food	[illegible]	[illegible]	5% 1740.6
				106	La Barre Valley	[illegible]	[illegible]	5% 1800.26
				107	Charles Baum	[illegible]	[illegible]	5% 2873.99
				105	Brewing Co. of A[illegible]	[illegible]	[illegible]	5% 1802.92
								5% 2946.74

[illegible]

1823342.1
321767
320634
239814
539.27
1842.13
924.99
1827.38
2925.51
2918.08
1825.56
3054.21
3169.38
2409.30
551.05
1816.65
2940.36
2934.53
4333.60
2913.85
355.30
870.54
551.25
2946.08
1835.79
926.15
920.92
854.21
744.15
2913.90
1836.78
1834.42
1832.28
1834.25
1101.05
3165.86
3131.26
3214.80
3236.09
35.75
178.53
924.06
1800.26
2893.99
1800.92
2946.74

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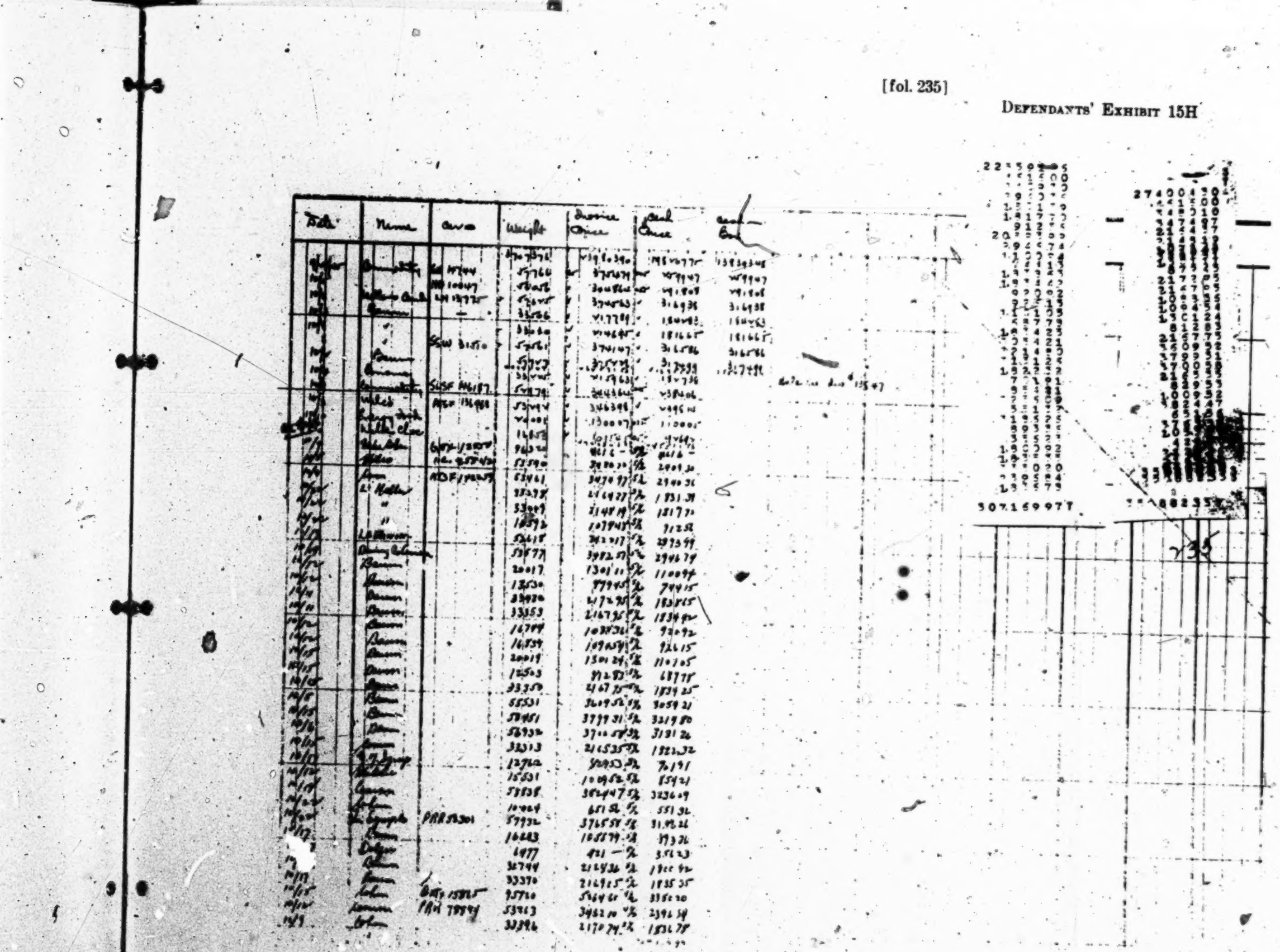
DEFENDANTS' EXHIBIT 15H



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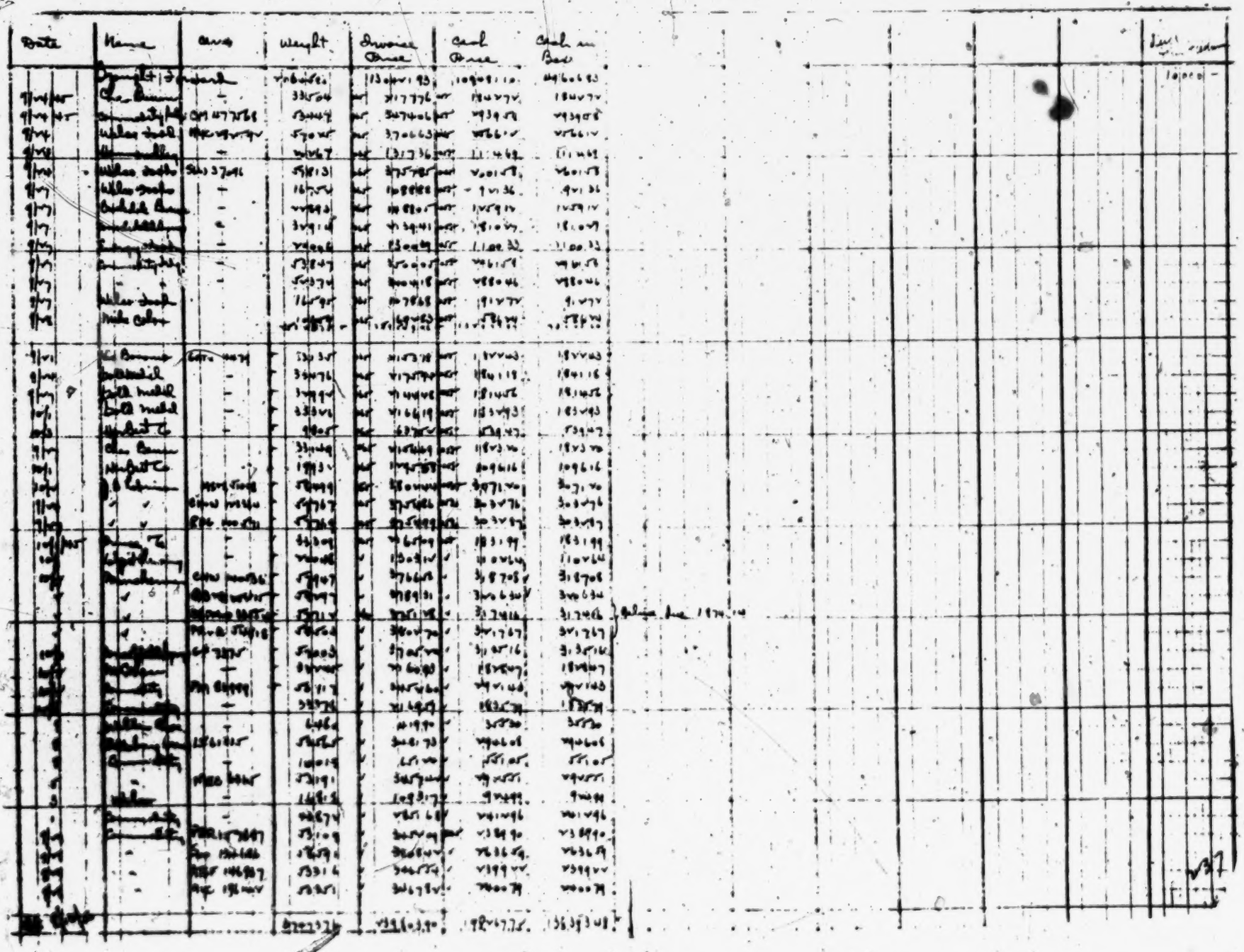
4/1/53

[fol. 237]

DEFENDANTS' EXHIBIT 15 I



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[fol. 239]

DEFENDANTS' EXHIBIT 15J

Date	Name	Car #	Weight	Invoice Price	Cash (Price)	Cash on Bar	Paid to Mrs Feldman	Cash to Mrs Feldman	Weighing Berwell	Paid out for Corn (cash)	Borrowed from Mrs Feldman	
								Date / Amt			Date	Amt
9/4/05	Wilson Bros											
9/4/05	Hunt Co.											
9/4/05	McCall Co											
9/4/05	Wilson Bros											
9/4/05	Wilson Bros											
9/4/05	Sig Simon											
9/4/05	Simon											
9/6/05	New Bell Co											
9/4/05	Simon											
9/4/05	Crockett Co											
9/4/05	Wilson Bros											
9/4/05	Wilson Bros											
9/4/05	Wilson Bros											
9/4/05	Simon											
9/4/05	Simon											
9/4/05	Simon											
9/4/05	Wilson Bros											
9/4/05	Wilson Bros											
9/4/05	Simon											
9/4/05	Simon											
9/4/05	Simon

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[fol. 240]

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[fol. 241]

DEFENDANTS' EXHIBIT 17A

ACCOUNTING COPY

INV. NO. C 189605
AUG 9 19[illegible]

INVOICE DATE
F. O. B CHICAGO

SOLD TO: SAME

TERMS:
CASH, 10 DAYS NET 30.
1% ON MARSH-MALLOW
2% ON CANDY

SHIP TO: GENERAL CONFECTIONS [illegible]
ADDRESS: 40 W 170TH ST
CITY: BRONX 52 NEW YORK CITY STATE OF N Y

ROUTE

SHIP VIA	YOUR ORDER NO.	DATE WANTED	BROKER	SOLD BY
			HSE 8	

CASES	DESCRIPTION		CARTONS OR WEIGHT	PRICE	EXTENSION
935	CARDINAL CHOC B2 [illegible] 3	[illegible]	[illegible]	37½	8377 60

Cases Candy

[fol. 242]

DEFENDANTS' EXHIBIT 17B

SHIPPING TICKET

PACKED BY	CHECKED BY	DATE SHIPPED
		AUG 9 1946

6

INV. NO. C 189605

A-189561

AUG 9 1946

17B

SOLD TO: SAME

SHIP TO: GENERAL CONFECTIONS CO
ADDRESS: 40 W 170TH ST
CITY: BRONX 52 NEW YORK CITY STATE OF N Y

ROUTE

SHIP VIA	YOUR ORDER NO.	DATE WANTED	BROKER	SOLD BY
			HSE 8	

CASES	DESCRIPTION		CARTONS OR WEIGHT
935	CARDINAL CHOC	24/1#	
	Cases Candy		
935		28985	8/9/1

FREIGHT PAID

DATE _____ AMOUNT _____

A/C DIST. _____

" " _____

DEPT.

THE SHOTWELL MFG. CO.

CANDIES AND MARSHMALLOWS
2801 POTOMAC AVE.
CHICAGO 51, ILL.

DATE _____ 194__

SOLD TO: General Foods Inc
40 W 170th St
New York City NY

SHIP TO:

TERMS:
CASH. 10 DAYS NET 30.
1% ON MARSHMALLOW
2% ON CANDY

F.O.B. CHICAGO UNLESS OTHERWISE INDICATED

ROUTE

SHIP VIA	YOUR ORDER NO.	DATE WANTED	BROKER	SOLD BY

QUAN.	UNIT	DESCRIPTION		PRICE	PER	EXTENSION	
935	Co	24-1# Cardinal	P	37½	24	8377	60
				5 96			
		car # W.T.EX	677 22				
		52 (143)					
		FILED					
		AT ... ROY H. JOHNSON					

(189605-8-9-46) Entered

Prices subject to withdrawal or change without notice. All prices and deliveries subject to strikes, fires, riots, acts of God, and conditions beyond our control. This order is taken subject to acceptance by The Shotwell Mfg. Co., at Chicago. Any State or Federal tax of any nature imposed now or hereafter, or enacted retroactively for buyer's account.

Gale

DEFENDANTS' EXHIBIT 17G

[fol. 245]

DEFENDANTS' EXHIBIT 18A

ACCOUNTING COPY

3

INV. NO. C 179678
JUL 23 1946
INVOICE DATE
F. O. B. CHICAGO

SOLD TO: GENERAL CONFECTIONS INC
40 [illegible]70TH ST
BRONX 52 N.Y.

13

TERMS:
CASH, 10 DAYS NET 30.
1% ON MARSH-MALLOW
2% ON CANDY

SHIP TO
ADDRESS
CITY
STATE OF
ROUTE: MILV-DELMBR NYC-B&A

SHIP VIA	YOUR ORDER NO.	DATE WANTED	BROKER	SOLD BY
URTX 5051			HSE	

CASES	DESCRIPTION		CARTONS OR WEIGHT	PRICE	EXTENSION
1646	CARDINAL ASSTD CHOC	24	39 [illegible]	37 1/3	14748 16

52 [illegible]

Cases Candy

[fol. 246]

DEFENDANTS' EXHIBIT 18B

SHIPPING TICKET

PACKED BY	CHECKED BY	DATE SHIPPED
		2/2 1946

6

INV. NO. C 179678

SOLD TO: GENERAL CONFECTIONS INC
40 E 170TH ST
BRONX 52 N Y

SHIP TO
ADDRESS
CITY
STATE OF

ROUTE: MILL-DELMAR NYC-BRA

SHIP VIA	YOUR ORDER NO.	DATE WANTED	SOLD BY
UNTK 3931			

	CASES	DESCRIPTION		CARTONS OR WEIGHT
	1646	CARDINAL ASSTD CHOC	24/1#	39504
		FILED 52 V 17		
		FEB 15 1946		
		Cases Candy		
	1646		51026	WT/CS

FREIGHT PAID
DATE _____ AMOUNT _____
A/C DIST. _____
" " _____

Roy E. Fuller - Official Court Reporter

18B

[fol. 247]

DEFENDANTS' EXHIBIT D

DAVID G. LUBBEN INCOME TAX RETURN 1946
STATEMENTS ATTACHED TO FEDERAL INCOME TAX RETURN AND NEW YORK STATE INCOME TAX RETURN FOR THE YEAR 1946 FILED BY DAVID G. LUBBEN AND FORMING AN EXHIBIT TO THE TAX RETURNS

On June 12, 1945, an agreement was executed between David G. Lubben, conducting a business under the trade name of Eatsum Food Products Co., in the City of New York, and Eatsum Food Products Co., a limited partnership, then having its principal place of business at 1841 Broadway, City of New York, whereby David G. Lubben agreed to sell, assign, transfer and deliver to the buyer (the limited partnership) the said business as a going concern.

On June 4, 1946, an agreement was executed between Eatsum Food Products Co. and William J. Giglio (the seller) and General Confections, Inc., a New York corporation and David G. Lubben (the purchaser), whereby certain assets, consisting of inventory, prepaid accounts, deposits receivable, stock and prepaid life insurance were sold, invoiced, transferred and conveyed by Eatsum Food Products Co. to General Confections, Inc.

The Dissolution Agreement of Eatsum Food Products Co., (a limited partnership) made as of May 31, 1946, between William J. Giglio and David G. Lubben as general partners and Ronald Stone, Roy Handermeyer, Margherita Giglio, Frank Lopertido, Frank Livorsi, Dorina Livorsi, limited partners, provides in part and briefly, as follows:

The Limited Partnership is dissolved and terminated as of the 31st of May 1946.

The Limited Partners acknowledge that they have received repayment of the capital contributed by them to the Firm and all sums or benefits to which they were entitled from the Firm or the general partners.

The assets of the Firm remaining after the aforesaid payments which have been completed to the Limited Partners.

and the Firm's liabilities shall be respectively distributed and assumed in the manner following:

A. The Firm and Giglio shall simultaneously with the execution and delivery of this agreement execute and deliver a valid instrument transferring, assigning, setting over and releasing to Lubben the plant now or heretofore operated by the Firm in the City of New York, including all factory and office equipment, machinery, fixtures, appurtenances, spare parts, furniture, appliances for the operating of the factory and other property of like nature, located upon the premises of the Firm at 40 West 170th Street New York City; and such sale, transfers and release of the said property and all thereof shall be free and clear of any liens or encumbrances whatsoever. Lubben acknowledges that he has examined all the said articles and that he will accept the same without warranty of condition hereby waiving any claim or offset because of defects therein. The transfer of the said property to Lubben shall be considered for all purposes as having been effected on the 9th day of March, 1946.

B. The Firm and Giglio shall transfer, assign and release to Lubben, simultaneously with the signing and exchange of the present agreement, all of their and his right, title and interest in and to the lease of the premises known as 40 West 170th Street, New York City, in which the aforementioned plant and machinery is located; and Giglio hereby represents that he has neither done nor caused to be done any act, or executed any paper which would prevent full title to the said lease in the said Lubben or his assigns, nor has he acted to modify or amend the said lease in any respect.

[fol. 248]

C. All of the other assets of the Firm, including the good will thereof and the right to conduct business under the name heretofore used by the Firm and

all other rights and property of whatsoever kind and nature belonging to the Firm (except those expressly granted to Lubben hereunder) shall forthwith be and hereby they are transferred, assigned and set over by the Firm and Lubben to Giglio; and Giglio accepts the same without any warranty or representation from Lubben as to the kind, quantity, quality thereof or as to any other thing relating thereto whatsoever, Giglio hereby waiving any claim or offset again Lubben by reason of any defect or shortage therein.

D. Giglio agrees forthwith to pay and fully discharge all of the liabilities and obligations of the Firm, whether or not matured, and to assume and satisfy all obligations of the Firm performable in the future and does hereby indemnify Lubben and save him harmless from any demand, suit or proceeding, that may be made or brought against him upon any liabilities, debts or obligations of the Firm whatsoever. Notwithstanding the foregoing, Lubben agrees to pay one-half of (a) any taxes other than income taxes owing by reason of the operation of the partnership business, the liability for which is not ascertainable from the partnership books and (b) any sum owing by reason of the violation of any governmental regulation (other than those relating to income taxes) including violation of the regulations of the office of Price Administration, wilful or inadvertent, if any there be, provided, however, that Lubben shall not be obligated hereunder unless he is given prompt written notice of such claim and is given a reasonable opportunity to defend the same if he shall so elect.

E. In addition to the foregoing Giglio agrees to pay, either directly to Lubben or to the Collector of Internal Revenue and the State Tax Commission any and all Federal and New York State income tax liabilities of Lubben resulting from, or created by, earnings, profits or operations of the firm dur-

ing the period from June 12, 1945 through May 31, 1946. Such tax liabilities of Lubben shall be computed at the rates in each case which would be appropriate and applicable if Lubben's share of the Firm's earnings and profits were his only taxable income for the said period. The liability hereby assumed is in addition to any liability Giglio may have for the payment of taxes upon his net income and earnings, the intention of this sentence being to assert that there is no reciprocal obligation upon Lubben to assume or pay any of Giglio's tax liabilities. Giglio further assumes the obligation of ascertaining, or procuring to be ascertained, the earnings and profits of the firm during said period from June 12, 1945 through May 31, 1946 and hereby assures Lubben that Lubben may rely in all confidence upon the figures of such earnings and profits submitted to him by, or at the instance of Giglio, and may execute returns based thereon. The obligation hereunder of Giglio shall be to pay such tax liability of Lubben, for the period in question and calculated as aforesaid, whether as such tax liability appears upon the filed returns or as the same may be redetermined by the proper Federal and State Taxing Authority. At the request of Giglio, however, Lubben agrees to make any application that Giglio may require, provided that he is advised that it is legal and proper, for any refund in connection with the said tax obligations and, if any such refund shall be obtained by Lubben, to pay to Giglio such part thereof as may have constituted the overpayment by Giglio of the proper tax for the period in question.

[fol. 249]

Rider to Paragraph 3 (c)

Giglio agrees to pay taxes at the time when they are required to be paid by law and agrees to and hereby does indemnify Lubben against any loss, cost, damage or expense to which Lubben may be subjected by reason of any late, delayed, or defective payments thereof.

The parties acknowledge that the transfer of the Firm's plant, as provided in paragraph 3 (a) hereof, was practically accomplished on the 9th day of March, 1946, that Lubben has relieved the firm from all expenses of operating the said plant after that date and has caused the same to be operated by a corporation organized by him and known as General Confections, Inc. all pursuant to the agreement of the parties hereto in anticipation of the execution and change of the present contract. It is therefore acknowledged and agreed that all obligations for rental of the said premises, or resulting from the use of the plant, from and after the 9th day of March, 1946, have been, or are to be, borne by Lubben alone and that all profits or losses from the conduct of the business of the said corporation in the said plant on and after the said 9th day of March, 1946, shall be solely enjoyed or borne by the said General Confections, Inc. and all parties hereto waive any rights, and shall be absolved of any obligations to participate therein.

There is attached hereto a photostatic copy of a letter from Eatsum Food Products Co., 19 Rector Street, New York, dated March 6, 1946, in reference to payment of Federal and New York State tax liabilities on behalf of David G. Lubben as reflected by the partnership books, Federal Income Tax Return and New York State Income Tax Return as filed as of the close of business on May 31, 1946.

The Machinery and Equipment of Eatsum Food Products Co. located at 40 West 170th Street, New York City, transferred to David G. Lubben was appraised by the American Appraisal Company and valued approximately at $100,000.00.

General Confections, Inc. acquired the above machinery and equipment from David G. Lubben against an issue of its Capital Stock, Common, valued at $100,000.00.

Gross Income as reported in the Income Tax Return of David G. Lubben for the year 1946:

The Gross Income reported on the Federal and New York State Income Tax Returns includes:

a. Officer's salary of David G. Lubben paid by General Confections, Inc. during the year 1946 as disclosed by the corporation's books.

b. Salary and Drawings from the partnership "Eatsum Food Products Co." from June 1945 to February 1946, as reflected in the bank statements of the Manufacturers Trust Company.

Taxpayer and his accountants, Sproull, Scholz & Co. of 17 East 42nd Street, New York City, were unable to obtain any information or data from the successors to the dissolved Limited Partnership of Eatsum Food Products Co. or its representative, Louis J. Roth in reference to David G. Lubben's distributive share of the partnership profits from June 12, 1945 to May 31, 1946, and or the "salary" and cash drawings paid to the taxpayer.

David G. Lubben for many months has made diligent attempts to obtain the necessary information and data on his distributive share of the partnership profits from the officials of Eatsum Food Products Co. and or its representatives in order to have available the authoritative data for the preparation of the 1946 income tax returns. All his efforts were unavailing and brought no results, and only evasive response.

[fol. 250] Accordingly, taxpayer's accountants had to prepared David G. Lubben's tax returns from whatever data were available to them as relates to the partnership dissolved May 31, 1946.

Specific attention is called to Section "E" of the Dissolution Agreement of Eatsum Food Products Co., dated May 31, 1946, copy of which section is included as an Exhibit.

The Firm and Giglio have defaulted to date in this part of the agreement by failing to provide David G. Lubben with data covering his distributive share of profits and or drawings and failing to make available to him, the information necessary to prepare Income Tax Returns, so as to compute income taxes due on the profits of the former general partner from June 12, 1945 to May 31, 1946.

It was therefore impossible for the taxpayer and his accountants to prepare complete income tax returns.

File this return with Collector of Internal Revenue on or before March 1, 1947. Any balance of tax due (item 9, below) must be paid in full with return. See separate instructions for filling out return.

Page 1

FORM 1040
Treasury Department
Internal Revenue Service

U. S. INDIVIDUAL INCOME TAX RETURN
FOR CALENDAR YEAR 1946

1946

or fiscal year beginning ....., 1946, and ending ....., 1947

EMPLOYEES.—Instead of this form, you may use your Withholding Statement, Form W-2, as your return, if your total income was less than $5,000, consisting wholly of wages shown on Withholding Statements or of such wages and not more than $100 of other wages, dividends, and interest.

Do not write in these spaces
File Code
Serial No.
District
(Cashier's Stamp)

Name DAVID G. LUBBEN
(PLEASE PRINT. If this return is for a husband and wife, use both first names)

ADDRESS c/o Sprouhle Schlohz & Co.
(PLEASE PRINT. Street and number or rural route)

17 EAST 42ND ST., NEW YORK, N.Y.
(City or town, postal zone number) (County) (State)

Occupation ..... Social Security No. .....

Your Exemptions

List your own name.
If married and your wife (or husband) had no income, or if this is a joint return of husband and wife, list name of your wife (or husband).

List names of other close relatives (as defined in instruction 1) with 1946 income of less than $500 who received more than one-half of their support from you. If this is a joint return of husband and wife, list dependent relatives of both.

1.

Name (please print)	Relationship	Name (please print)	Relationship
Your name DAVID G LUBBEN	xxxxxxxxx		

EXTENSION GRANTED

Your Income

Enter your total wages, salaries, bonuses, commissions, and other compensation received in 1946, BEFORE PAY-ROLL DEDUCTIONS for taxes, dues, insurance, bonds, etc. Members of armed forces and persons claiming travelling or reimbursed expenses, see instruction 2.

2.

Print Employer's Name	Where Employed (City and State)	Amount
GENERAL CONFECTIONS INC	40 WEST 170TH ST, NEW YORK, N.Y.	$ 10,500 00

Enter total here → $ 10,500 00

3. Enter here the total amount of your dividends .....
4. Enter here the total amount of your interest (including interest from Government obligations unless wholly exempt from taxation) .....
5. If you received any other income, give details on page 2 and enter the total here 37,645 00
6. Add amounts in items 2, 3, 4, and 5, and enter the total here ..... $ 48,145 00

How to Figure Your Tax

IF YOUR INCOME WAS LESS THAN $5,000.—You may find your tax in the tax table on page 4. This table, which is provided by law, automatically allows about 10 percent of your total income for charitable contributions, interest, taxes, casualty losses, medical expenses, and miscellaneous expenses. If your expenditures and losses of these classes amount to more than 10 percent, it will usually be to your advantage to itemize them and compute your tax on page 3.

IF YOUR INCOME WAS $5,000 OR MORE.—Disregard the tax table and compute your tax on page 3. You may either take a standard deduction of $500 or itemize your deductions, whichever is to your advantage.

HUSBAND AND WIFE.—If husband and wife file separate returns, and one itemizes deductions, the other must also itemize deductions.

Tax Due or Refund

7. Enter your tax from table on page 4, or from line 12, page 3 ..... $ 19,335 02
8. How much have you paid on your 1946 income tax?
   (A) By withholding from your wages ..... $ 1865.80
   (B) By payments on 1946 Declaration of Estimated Tax .....
   Enter total here → 1865.80
9. If your tax (item 7) is larger than payments (item 8), enter BALANCE OF TAX DUE here ..... $ 17,469 22
10. If your payments (item 8) are larger than your tax (item 7), enter the OVERPAYMENT here ..... $
    Check (y) whether you want this overpayment: Refunded to you ☐; or Credited on your 1947 estimated tax ☐

If you filed a return for a prior year, what was the latest year? 1945

To which Collector's office was it sent? 3RD N.Y.

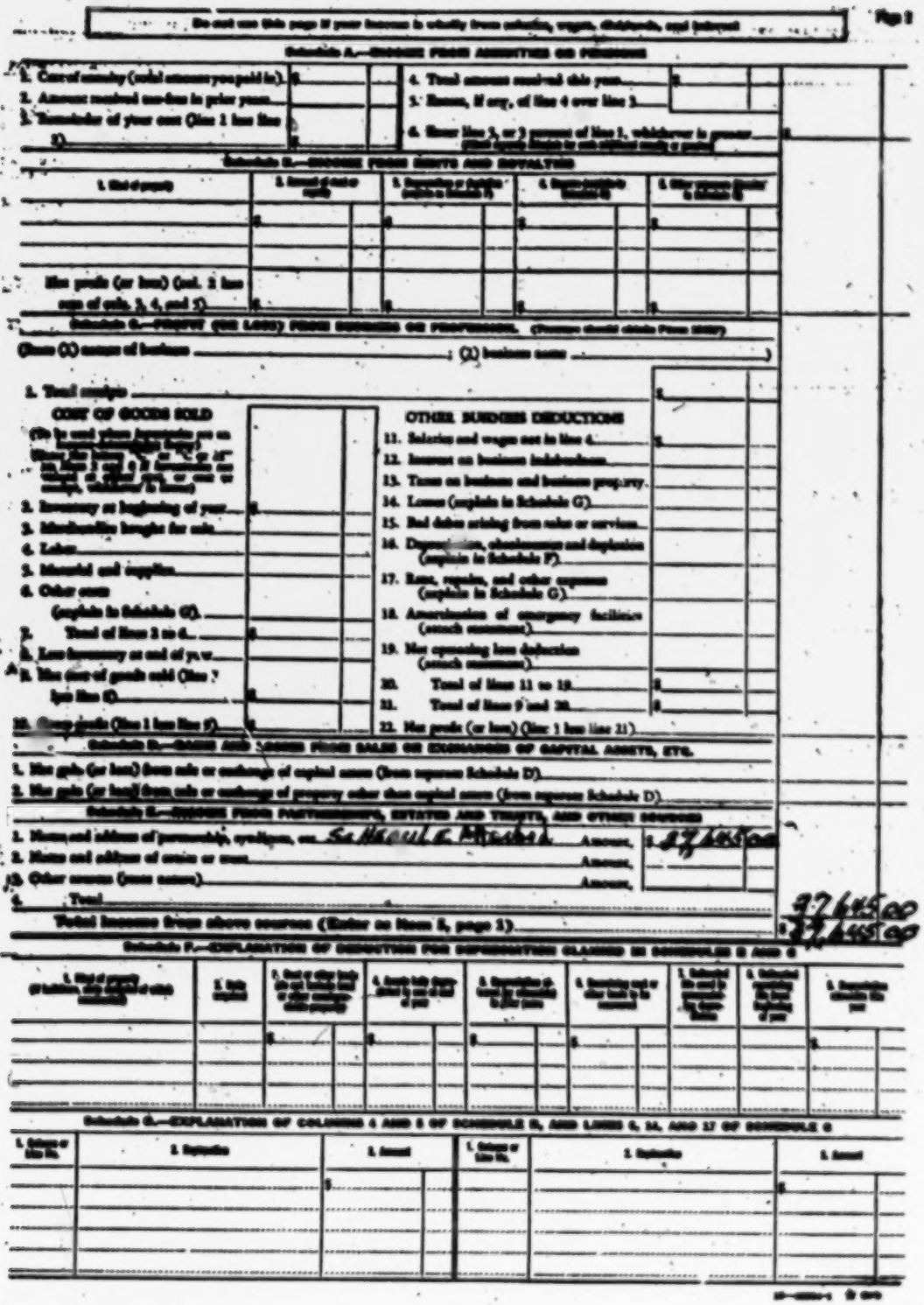
To which Collector's office did you pay amount claimed in item 8 (B), above? 3RD N.Y.

Is your wife (or husband) making a separate return for 1946? — ("Yes" or "No")
If "Yes," write below:
Name of wife (or husband) —
Collector's office to which sent .....

I declare under the penalties of perjury that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

(Signature of person (other than taxpayer or agent) preparing return) (Date) (Signature of taxpayer) (Date)

(Name of firm or employer, if any) (If this is a joint return of husband and wife, it must be signed by both)



Do not use this page if your income is wholly from salaries, wages, dividends, and interest

Page 2

Schedule A.—GROSS PROFIT ASSENTED ON PURCHASES

1. Cost of commodity (total amount you paid in)	$	4. Total amount received this year	$
2. Amount received on them in prior years		5. Excess, if any, of line 4 over line 3	
3. Remainder of your cost (line 1 less line 2)		6. Enter line 3, or 3 percent of line 1, whichever is greater (Such figure is not subject to any penalty)	

Schedule B.—GROSS PROFIT RENTS AND ROYALTIES

1. Kind of property	2. Amount of rents or royalties	3. Deductions as allowed in Schedule H	4. Gross profit (column 2 less column 3)	5. Net amount (enter in Schedule C)
	$	$	$	$
Net gross (or loss) (col. 2 less sum of cols. 3, 4, and 5)	$	$	$	$

Schedule C.—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (Persons should obtain Form 1040F)

(Name (1) source of business _____; (2) business name _____)

1. Total receipts			$
COST OF GOODS SOLD (To be used where inventories are an income-producing factor.)		OTHER BUSINESS DEDUCTIONS	
2. Inventory at beginning of year	$	11. Salaries and wages not in line 4	$
3. Merchandise bought for sale		12. Interest on business indebtedness	
4. Labor		13. Taxes on business and business property	
5. Material and supplies		14. Losses (explain in Schedule G)	
6. Other costs (explain in Schedule G)		15. Bad debts arising from sales or services	
7. Total of lines 2 to 6	$	16. Depreciation, obsolescence and depletion (explain in Schedule F)	
8. Less inventory at end of year		17. Rent, repairs, and other expenses (explain in Schedule G)	
9. Net cost of goods sold (line 7 less line 8)	$	18. Amortization of emergency facilities (attach statement)	
10. Gross profit (line 1 less line 9)	$	19. Net operating loss deduction (attach statement)	
		20. Total of lines 11 to 19	$
		21. Total of lines 9 and 20	$
		22. Net profit (or loss) (line 1 less line 21)	

Schedule D.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS, ETC.

1. Net gain (or loss) from sale or exchange of capital assets (from separate Schedule D)
2. Net gain (or loss) from sale or exchange of property other than capital assets (from separate Schedule D)

Schedule E.—GAINS FROM PARTNERSHIPS, ESTATES AND TRUSTS, AND OTHER SOURCES

1. Name and address of partnership, syndicate, etc. Samuel E. Rhoades	Amount	$ 27,445.00
2. Name and address of estate or trust	Amount	
3. Other sources (state nature)	Amount	
4. Total		27,445.00
Total income from above sources (Enter as Item 5, page 1)		$ 27,445.00

Schedule F.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULE C AND E

1. Kind of property (If building, state material of which constructed)	2. Date acquired	3. Cost or other basis of property (or amount added to capital account since March 1, 1913)	4. Amount claimed for depreciation in prior years	5. Depreciation allowed in Schedule C, E, or H, for 1936	6. Depreciation allowed or allowable in prior years	7. Method used in computing depreciation (Whether straight line or other method)	8. Estimated remaining useful life of property	9. Depreciation claimed for 1936
		$	$	$	$			$

Schedule G.—EXPLANATION OF COLUMNS 4 AND 5 OF SCHEDULE B, AND LINES 6, 14, AND 17 OF SCHEDULE C

1. Schedule and line No.	2. Explanation	3. Amount	1. Schedule and line No.	2. Explanation	3. Amount
		$			$

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Do not itemize deductions if—(1) You determine your tax from the tax table on page 4, or
(2) Your total income is $5,000 or more and you claim the $1000 standard deduction.
If husband and wife living together or end of year file separate returns and one itemizes deductions, the other must file his or her return on Form 1040, and must also itemize deductions.

Page 3

DEDUCTIONS

Describe deductions and state to whom paid. If more space is needed, list deductions on separate sheet of paper and attach to this return.

			Amount
Contributions			
	SCHEDULE ATTACHED	$ 1800 00	
	Allowable Contributions (not in excess of 15 percent of item 6, page 1)		$ 1800 00
Interest		$	
	Total Interest		
Taxes	NEW YORK STATE INCOME	$ 4857 10	
	N.Y. CITY SALES	100 00	
	Total Taxes		4957 10
Losses from fire, storm, shipwreck, or other casualty, or theft.		$	
	Total Allowable Losses (not compensated by insurance or otherwise)		
Medical and dental expenses		$	
	Net Expenses (not compensated by insurance or otherwise)	$	
	Enter 5 percent of item 6, page 1, and subtract from Net Expenses		
	Allowable Medical and Dental Expenses. See instruction for limitation		
Miscellaneous (See instructions)		$	
	Total Miscellaneous Deductions		
	TOTAL DEDUCTIONS		$ 6757 10

TAX COMPUTATION—FOR PERSONS NOT USING TAX TABLE ON PAGE 4

1. Enter amount shown in item 6, page 1. This is your Adjusted Gross Income	$ 48145 00
2. Enter DEDUCTIONS (If deductions are itemized above, enter the total of such deductions; if adjusted gross income (line 1, above) is $5,000 or more and deductions are not itemized, enter the standard deduction of $500)	6757 10
3. Subtract line 2 from line 1. Enter the difference here. This is your Net Income	$ 41387 90
4. Enter your exemptions ($500 for each person whose name is listed in item 1, page 1)	500 00
5. Subtract line 4 from line 3. Enter the difference here	$ 40887 90
6. Use the tax rates in instruction sheet to figure your combined normal tax and surtax on amount entered on line 5. Enter the normal tax here. (If line 5 above includes partially tax-exempt interest, see Tax Computation Instructions)	$ 20352 65
7. Enter here 5 percent of amount entered on line 6	1017 63
8. Subtract line 7 from line 6. Enter the difference here. This is your combined normal tax and surtax. (If alternative tax computation is made on separate Schedule D, enter here tax from line 12 of Schedule D)	19335 02
IF YOU USED THE $500 STANDARD DEDUCTION IN LINE 2, DISREGARD LINES 9, 10, AND 11, AND COPY ON LINE 12 THE SAME FIGURE YOU ENTERED ON LINE 8	
9. Enter here any income tax payments to a foreign country or U. S. possession (attach Form 1116) $	
10. Enter here any income tax paid at source on tax-free covenant bond interest	
11. Add the figures on lines 9 and 10 and enter the total here	
12. Subtract line 11 from line 8. Enter the difference here and in item 7, page 1. This is your tax	$ 19335 02

[fol. 255]

DEFENDANTS' EXHIBIT 20C

Page 4

If you use this table, tear off this page and file only pages 1 and 2

TAX TABLE

FOR PERSONS WITH INCOMES UNDER $5,000 NOT COMPUTING TAX ON PAGE 3

Read down the shaded columns below until you find the line covering the total income you entered in Item 6, page 1. Then read across to the column headed by the number corresponding to the number of persons listed in Item 1, page 1. Enter the tax you find there in Item 7, page 1.

If total income in Item 6, page 1, is—		And the number of persons listed in Item 1, page 1, is—				If total income in Item 6, page 1, is—		And the number of persons listed in Item 1, page 1, is—								
		1	2	3	4 (or more)			1	2	3	4	5	6	7	8	9 (or more)
At least	But less than	Your tax is—				At least	But less than	Your tax is—								
$0	$650	$0	$0	$0	$0	$2,225	$2,250	$288	$193	$98	$3	$0	$0	$0	$0	$0
650	675	1	0	0	0	2,250	2,275	292	197	102	7	0	0	0	0	0
675	700	5	0	0	0	2,275	2,300	296	201	106	11	0	0	0	0	0
700	725	10	0	0	0	2,300	2,325	300	205	110	15	0	0	0	0	0
725	750	14	0	0	0	2,325	2,350	305	210	115	20	0	0	0	0	0
750	775	18	0	0	0	2,350	2,375	309	214	119	24	0	0	0	0	0
775	800	23	0	0	0	2,375	2,400	313	218	123	28	0	0	0	0	0
800	825	27	0	0	0	2,400	2,425	318	223	128	33	0	0	0	0	0
825	850	31	0	0	0	2,425	2,450	322	227	132	37	0	0	0	0	0
850	875	35	0	0	0	2,450	2,475	326	231	136	41	0	0	0	0	0
875	900	40	0	0	0	2,475	2,500	330	235	140	45	0	0	0	0	0
900	925	44	0	0	0	2,500	2,525	335	240	145	50	0	0	0	0	0
925	950	48	0	0	0	2,525	2,550	339	244	149	54	0	0	0	0	0
950	975	52	0	0	0	2,550	2,575	343	248	153	58	0	0	0	0	0
975	1,000	57	0	0	0	2,575	2,600	347	252	157	62	0	0	0	0	0
1,000	1,025	61	0	0	0	2,600	2,625	352	257	162	67	0	0	0	0	0
1,025	1,050	65	0	0	0	2,625	2,650	356	261	166	71	0	0	0	0	0
1,050	1,075	70	0	0	0	2,650	2,675	360	265	170	75	0	0	0	0	0
1,075	1,100	74	0	0	0	2,675	2,700	365	270	175	80	0	0	0	0	0
1,100	1,125	78	0	0	0	2,700	2,725	369	274	179	84	0	0	0	0	0
1,125	1,150	82	0	0	0	2,725	2,750	373	278	183	88	0	0	0	0	0
1,150	1,175	87	0	0	0	2,750	2,775	377	282	187	92	0	0	0	0	0
1,175	1,200	91	0	0	0	2,775	2,800	382	287	192	97	2	0	0	0	0
1,200	1,225	95	0	0	0	2,800	2,825	387	291	196	101	6	0	0	0	0
1,225	1,250	100	5	0	0	2,825	2,850	391	295	200	105	10	0	0	0	0
1,250	1,275	104	9	0	0	2,850	2,875	396	299	204	109	14	0	0	0	0
1,275	1,300	108	13	0	0	2,875	2,900	401	304	209	114	19	0	0	0	0
1,300	1,325	112	17	0	0	2,900	2,925	405	308	213	118	22	0	0	0	0
1,325	1,350	117	22	0	0	2,925	2,950	410	312	217	122	27	0	0	0	0
1,350	1,375	121	26	0	0	2,950	2,975	415	317	222	127	32	0	0	0	0
1,375	1,400	125	30	0	0	2,975	3,000	419	321	226	131	36	0	0	0	0
1,400	1,425	129	34	0	0	3,000	3,050	427	327	232	137	42	0	0	0	0
1,425	1,450	134	39	0	0	3,050	3,100	436	336	241	146	51	0	0	0	0
1,450	1,475	138	43	0	0	3,100	3,150	445	344	249	154	59	0	0	0	0
1,475	1,500	142	47	0	0	3,150	3,200	455	353	258	163	68	0	0	0	0
1,500	1,525	147	52	0	0	3,200	3,250	464	361	266	171	76	0	0	0	0
1,525	1,550	151	56	0	0	3,250	3,300	474	370	275	180	85	0	0	0	0
1,550	1,575	155	60	0	0	3,300	3,350	483	379	284	189	94	0	0	0	0
1,575	1,600	159	64	0	0	3,350	3,400	492	388	292	197	102	7	0	0	0
1,600	1,625	164	69	0	0	3,400	3,450	502	397	301	206	111	16	0	0	0
1,625	1,650	168	73	0	0	3,450	3,500	511	407	309	214	119	24	0	0	0
1,650	1,675	172	77	0	0	3,500	3,550	521	416	318	223	128	33	0	0	0
1,675	1,700	176	81	0	0	3,550	3,600	530	425	326	231	136	41	0	0	0
1,700	1,725	181	86	0	0	3,600	3,650	539	435	335	240	145	50	0	0	0
1,725	1,750	185	90	0	0	3,650	3,700	549	444	343	248	153	58	0	0	0
1,750	1,775	189	94	0	0	3,700	3,750	558	454	352	257	162	67	0	0	0
1,775	1,800	194	99	4	0	3,750	3,800	568	463	361	266	171	76	0	0	0
1,800	1,825	198	103	8	0	3,800	3,850	577	472	369	274	179	84	0	0	0
1,825	1,850	202	107	12	0	3,850	3,900	586	482	378	283	188	93	0	0	0
1,850	1,875	206	111	16	0	3,900	3,950	596	491	387	291	196	101	6	0	0
1,875	1,900	211	116	21	0	3,950	4,000	605	501	396	300	205	110	15	0	0
1,900	1,925	215	120	25	0	4,000	4,050	615	510	406	308	213	118	23	0	0
1,925	1,950	219	124	29	0	4,050	4,100	624	520	415	317	222	127	32	0	0
1,950	1,975	223	128	33	0	4,100	4,150	633	529	424	325	230	135	40	0	0
1,975	2,000	228	133	38	0	4,150	4,200	643	538	434	334	239	144	49	0	0
2,000	2,025	232	137	42	0	4,200	4,250	652	548	443	342	247	152	57	0	0
2,025	2,050	236	141	46	0	4,250	4,300	662	557	453	351	256	161	66	0	0
2,050	2,075	241	146	51	0	4,300	4,350	671	567	462	360	265	170	75	0	0
2,075	2,100	245	150	55	0	4,350	4,400	680	576	471	368	273	178	83	0	0
2,100	2,125	249	154	59	0	4,400	4,450	690	585	481	377	282	187	92	0	0
2,125	2,150	253	158	63	0	4,450	4,500	699	595	490	386	290	195	100	5	0
2,150	2,175	258	163	68	0	4,500	4,550	709	604	500	395	299	204	109	14	0
2,175	2,200	262	167	72	0	4,550	4,600	718	614	509	404	307	213	117	22	0
2,200	2,225	266	171	76	0	4,600	4,650	727	623	518	414	316	221	126	31	0
2,225	2,250	271	176	81	0	4,650	4,700	737	632	528	423	324	229	134	39	0
2,250	2,275	275	180	85	0	4,700	4,750	746	642	537	433	333	238	143	48	
2,275	2,300	279	184	89	0	4,750	4,800	756	651	547	442	342	247	152	57	0
2,300	2,325	283	188	93	0	4,800	4,850	765	661	556	452	350	256	160	65	0
						4,850	4,900	774	670	565	461	359	264	169	74	0
						4,900	4,950	784	679	575	470	367	272	177	82	0
						4,950	5,000	793	689	584	480	376	281	186	91	0

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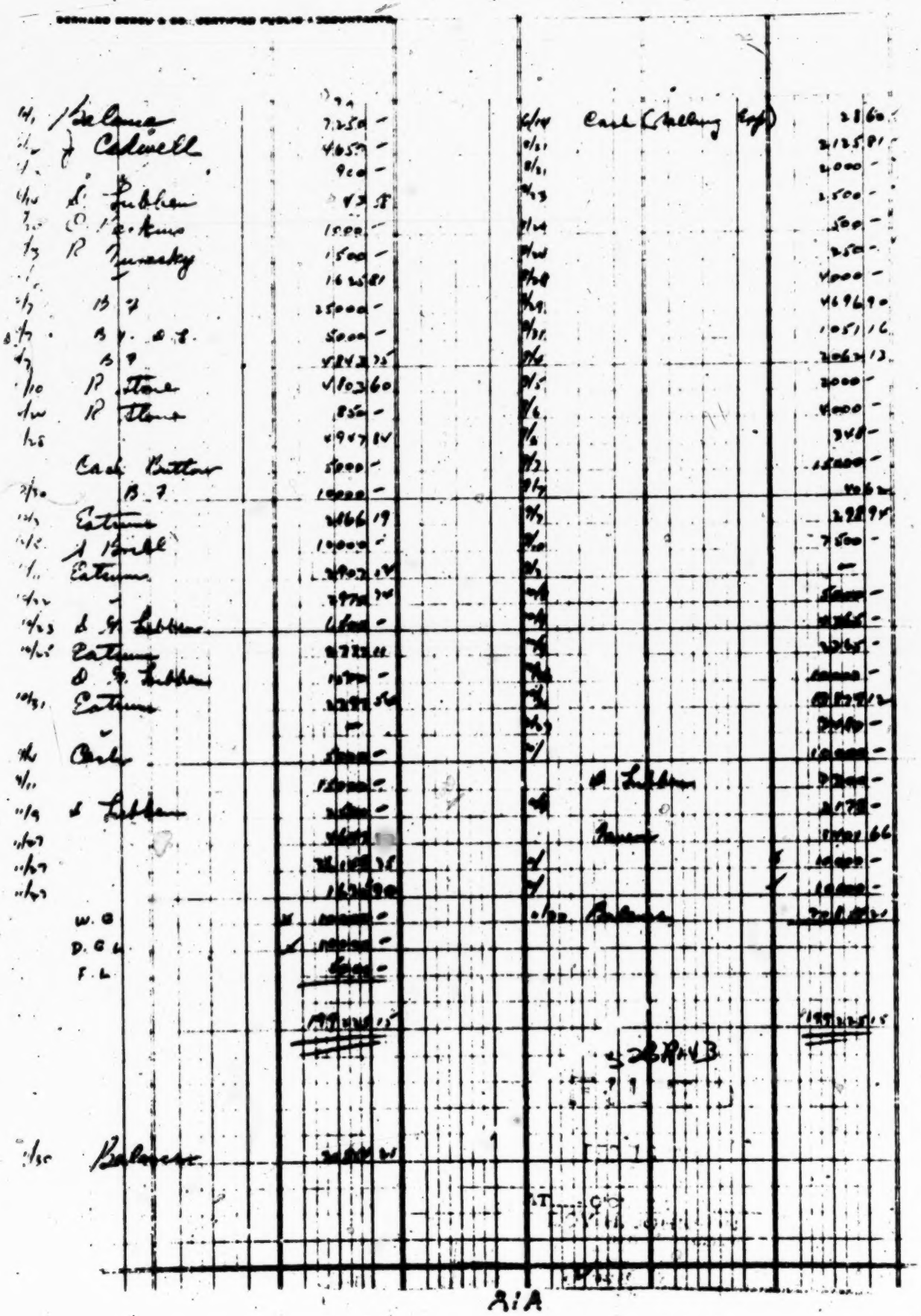
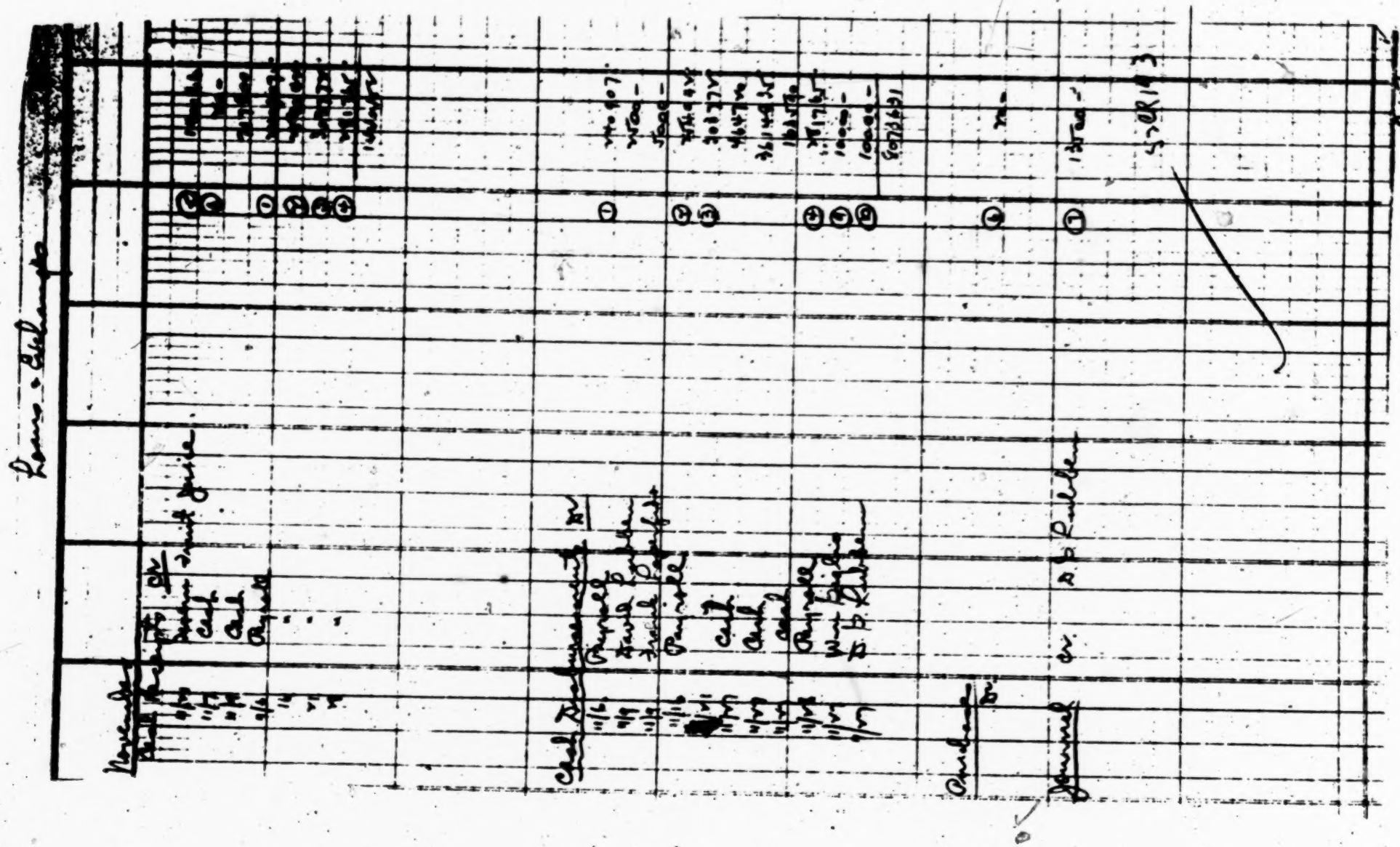
JK
12/20/45

Eatonia Feed Products
Loans & Exchanges
November 30, 1945


Eatonia
Cadwell
Eatonia
Eatonia
Eatonia

[fol. 260]

DEFENDANTS' EXHIBIT 21B



[fol. 261]

DEFENDANTS' EXHIBIT 21C

Catsum Food Products Co
Analysis of Loans & Exchanges

12/31/45

Debit

John Caldwell	5550 -
Balance - old Co	7250 -
Catsum - Balance of cash - old a/c	4358
Frank Poperfido	5000 -
C. Reese	175 g
D. G. Rubben	6557049
	83415 82
Less: Wm Heiman credit for bonus advance	500
Balance per Ledger 12/31/45	82915 82

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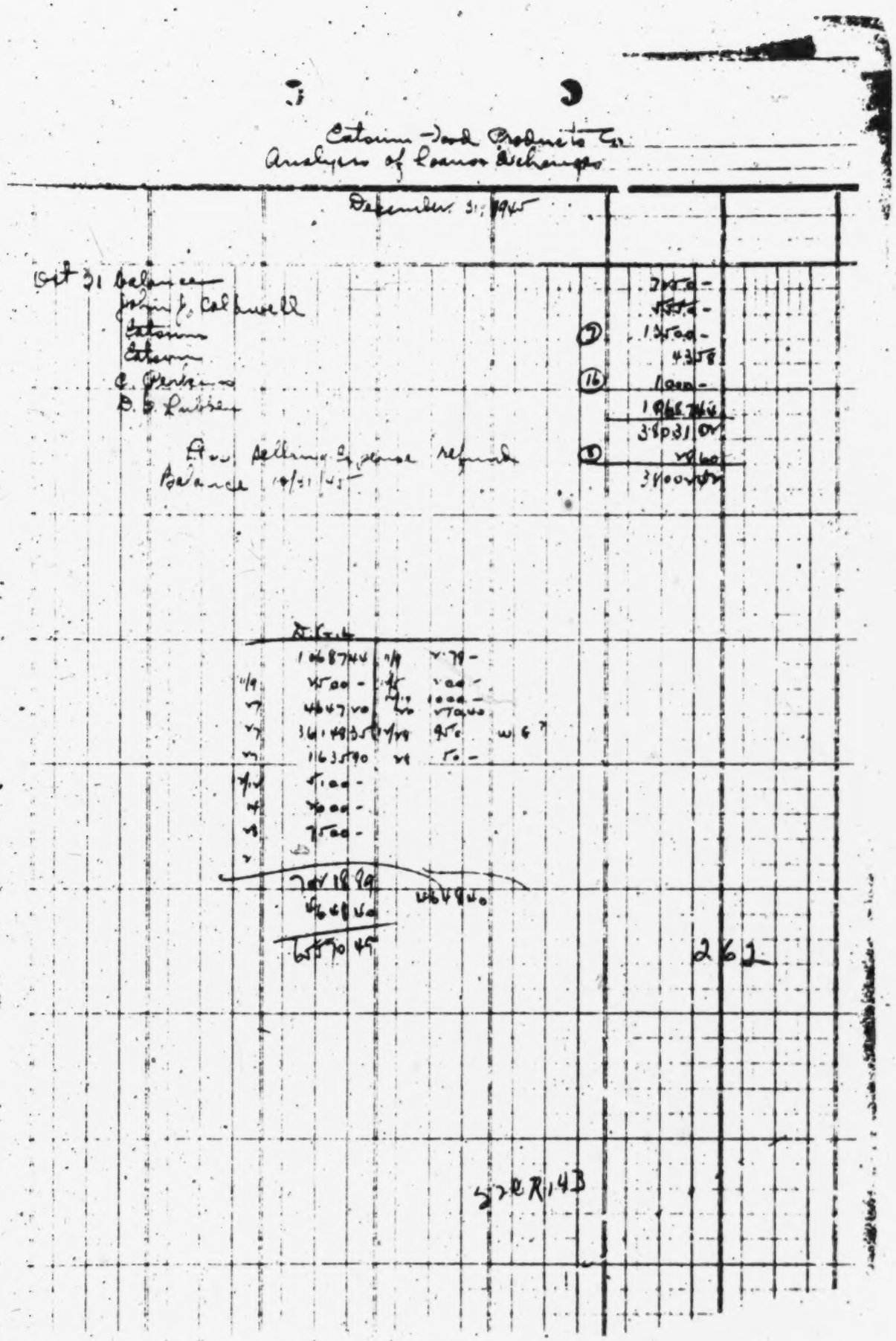

Catsum Food Products Co.
Analysis of Loans & Exchanges

December 31, 1945

Oct 31 Balance		7250 -
John J. Caldwell		5550 -
Catsum	(7)	13500 -
Catsum		4358
C. Perkins	(16)	1000 -
D. S. Lubber		1068744
		38031 02
Etc. selling expense refund	(8)	2860
Balance 10/31/45		38002 42

D.K.L.

	1068744	11/9	2.79 -	
11/9	2500 -	11/5	200 -	
27	4647 20	12/10	1000 -	
27	3614835	12/28	950	w/ 6
27	1635 90	28	50 -	
7/12	5100 -			
14	2000 -			
28	7500 -			
2				
	7021 89		4648 40	
	4648 40			
	6557 0 45			

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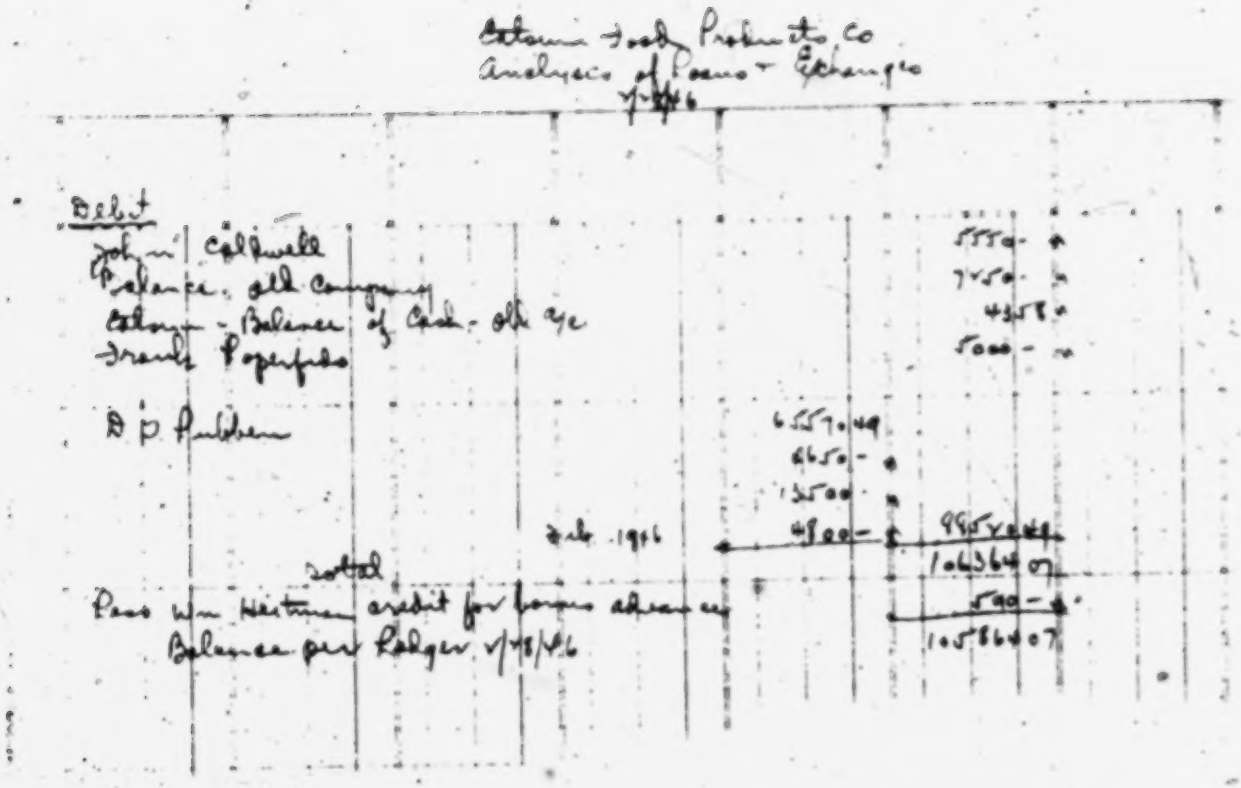
S2ER143

[fol. 263]

DEFENDANTS' EXHIBIT 21F



[fol. 264]

DEFENDANTS' EXHIBIT 26

MINUTES OF SECOND ANNUAL MEETING OF BOARD OF DIRECTORS OF HABERKORN CANDY CO., INC.

The second annual meeting of Board of Directors of HABERKORN CANDY CO., INC., an Illinois corporation, was held at 1152 W. Polk Street, Chicago, Illinois on April 12, 1946, immediately following the adjournment of the Second Annual Meeting of Stockholders.

The following directors were present:

JAMES F. MORAN
EDWARD T. URBAN
DAVID G. LUBBEN

JAMES F. MORAN, President of the corporation, acted as chairman of the meeting. EDWARD T. URBAN acted as secretary.

The following persons were nominated as officers of the corporation for the ensuing year:

JAMES F. MORAN —President
DAVID G. LUBBEN —Vice President
EDWARD T. URBAN—Secretary and Treasurer.

There being no further nominations, the above named persons were unanimously elected to the offices indicated.

There being no further business co come before the meeting, a motion to adjourn was duly made, seconded and unanimously carried.

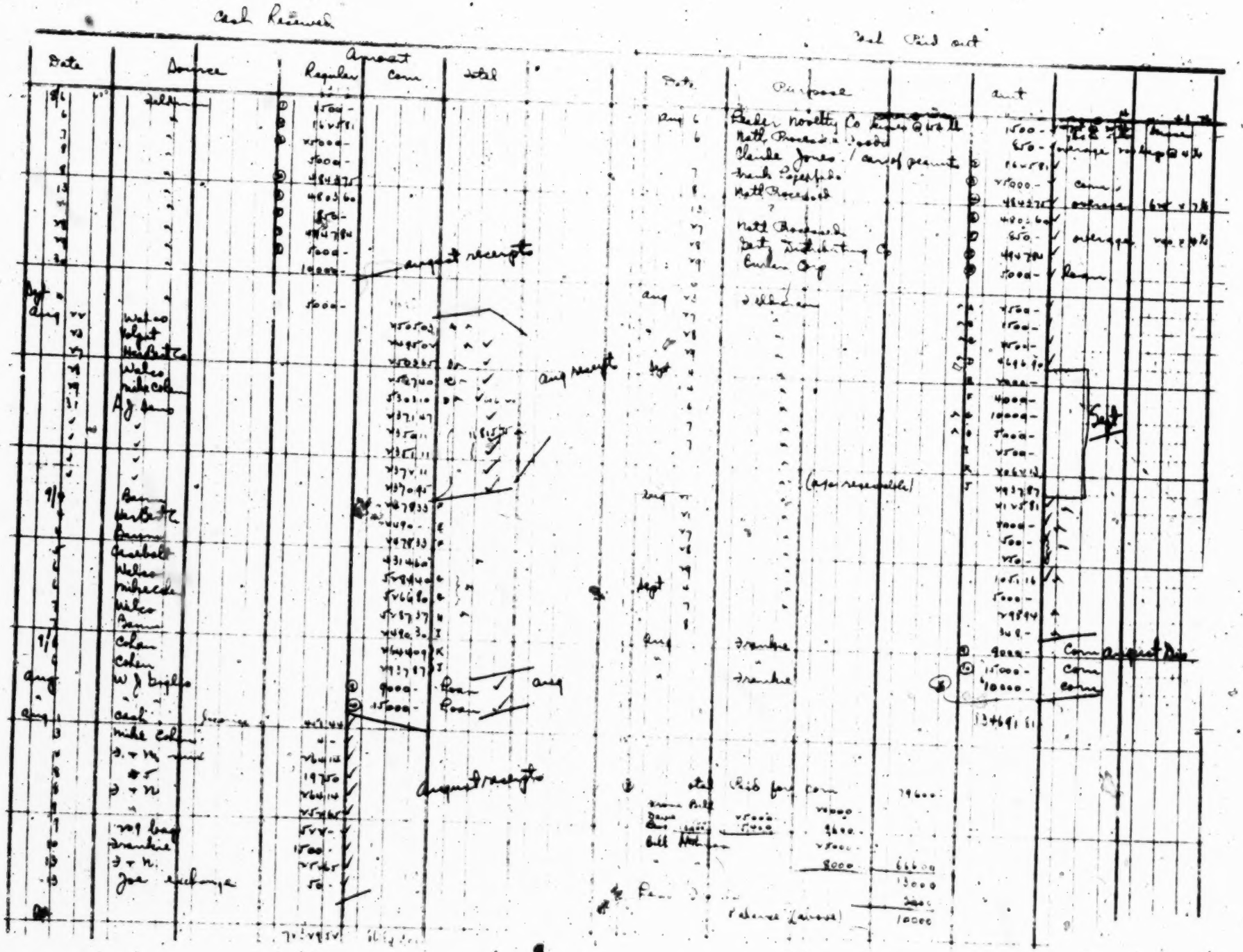
/s/ EDW. T. URBAN
Secretary

APPROVED:

/s/ JAMES MORAN
/s/ EDW. T. URBAN
/s/ DAVID G. LUBBEN

[fol. 265]

DEFENDANTS' EXHIBIT 27


Cash Received
Date
Source
Regular
Comm
total
amount receipts
Aug receipts
Cash Paid out
Date
Purpose
amt
Comm
Salt
Comm
Comm
Comm

[fol. 266]

Received from Sam Krane
4/1/53

[fol. 267]

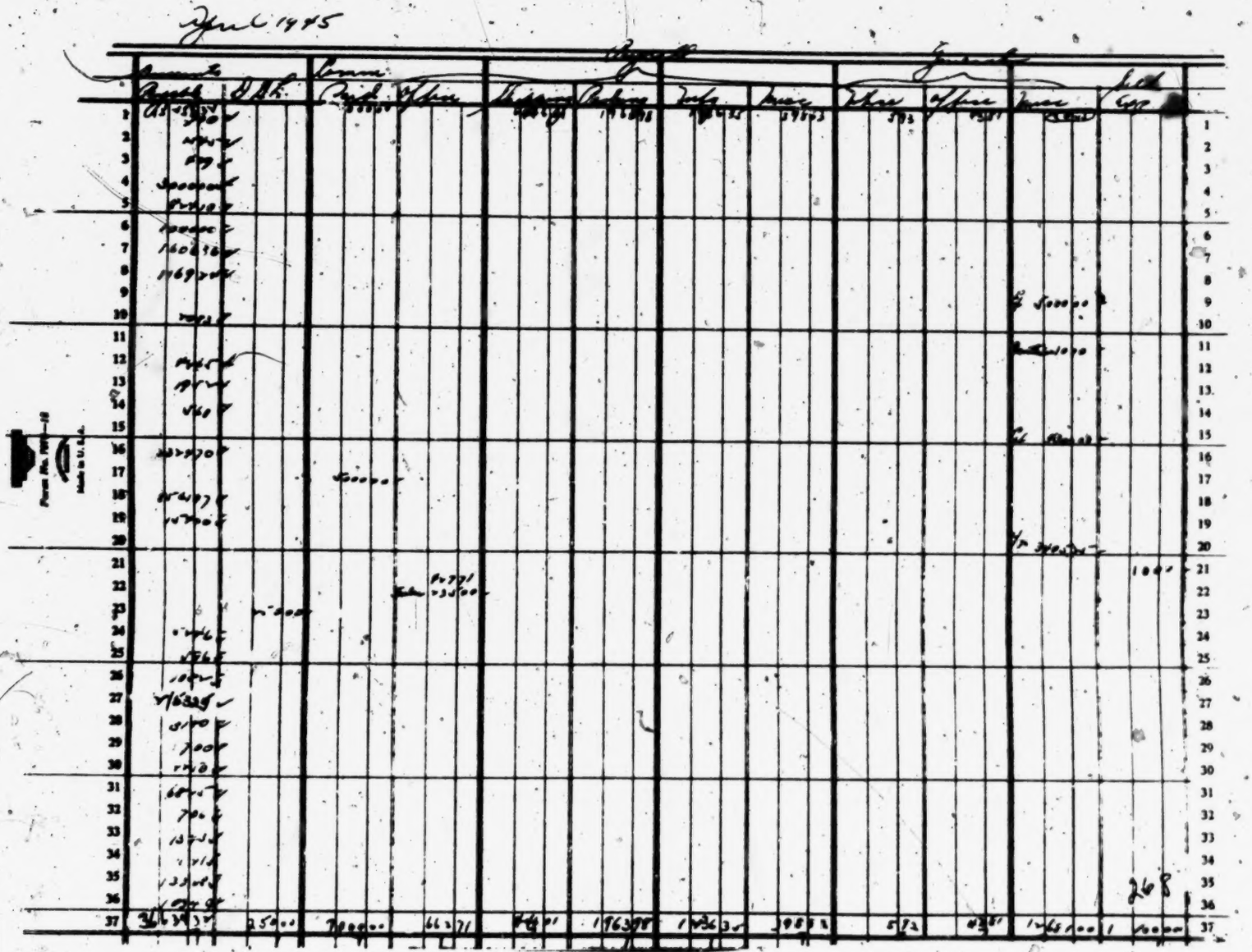
DEFENDANTS' EXHIBIT 28A

FILED

Cash Disbursem to

					Net Cash	Purchase Discount	Freight	Allow.	O.A.C.	Wist Tax	
1	Apr.	3	United Rubber Supply Co.	✓	700	50.35				41.[illegible]	1
2			Western Carloading Co.	✓	1545						2
3			Western Union	✓	409						3
4			Charles Michaels	✓	500000						4
5		4	Harry M. Simon	✓	82410						5
6			Cash - Phoebe Phelps Carmelo	✓	100000						6
7			Pur Ams Conf. Co.	✓	155085	5551					7
8			Cash Pur Ams Conf. Co.	✓	111179		5745				8
9			Calcium Oxide	✓	500000						9
10			Acme Fast Freight	✓	[illegible]						10
11			Laymen's Nat'l Committee	✓	1000						11
12			National Carloading	✓	4265						12
13			Pennsylvania R.R. Co.	✓	1952						13
14			Universal Carloading	✓	568						14
15		5	Cash	✓	430000						15
16			National Processed Foods Corp.	✓	232470						16
17			Paul Hershey	✓	500000						17
18			Cash Joseph Iger	✓	456187						18
19			Sherman Price	✓	15400						19
20		6	Gen. Comm. Except. Co.	✓	340525						20
21			R. Stone	✓	8330				840	1570	21
22			Payroll	✓	54878				663	10730	22
23			David Lubben	✓	25000						23
24			Acme Fast Freight	✓	5246						24
25			All Westchester Movers	✓	596						25
26			Associated Transport	✓	1082						26
27			Class Co.	✓	410009	536					27
28			Dodge & Heath Co.	✓	3140						28
29			Guaranteed Sanitation	✓	1700						29
30			Hinde West Paper Mfg. Co.	✓	2227	23					30
31			Z. Kahnstamm & Co.	✓	6757	68					31
32			Letter Guild	✓	706						32
33			M. G. M. Trucking Co.	✓	1343						33
34			National Bzane Co.	✓	121						34
35			Pacific & Atlantic Shippers	✓	13528						35
36			Pennsylvania R.R. Co.	✓	10049						36
37				✓	60665 57	309 93	59 86		50 10	539 [illegible]	37

[fol. 268]



[fol. 271]

DEFENDANTS' EXHIBIT 28C

28C

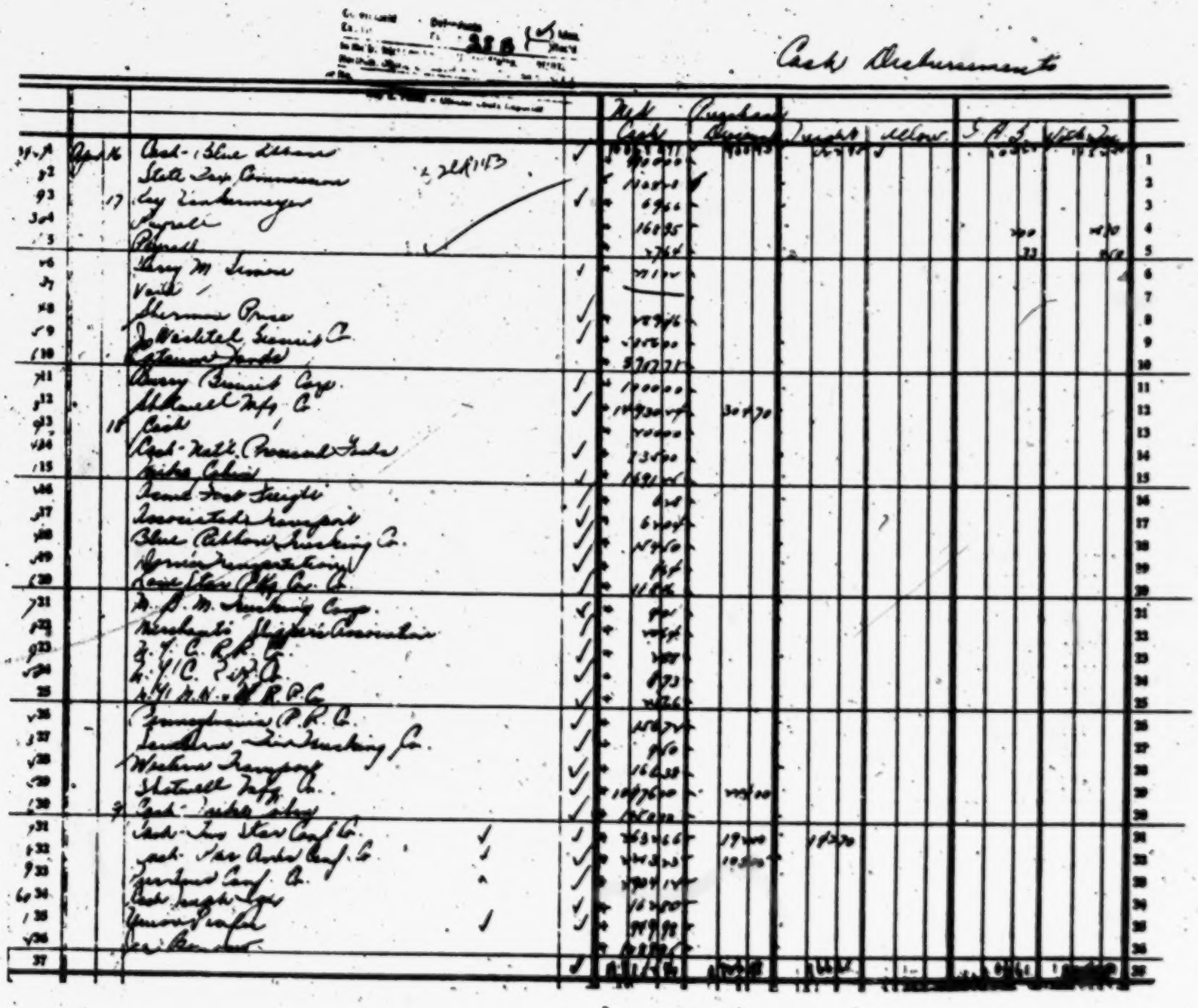
Cash Disbursements

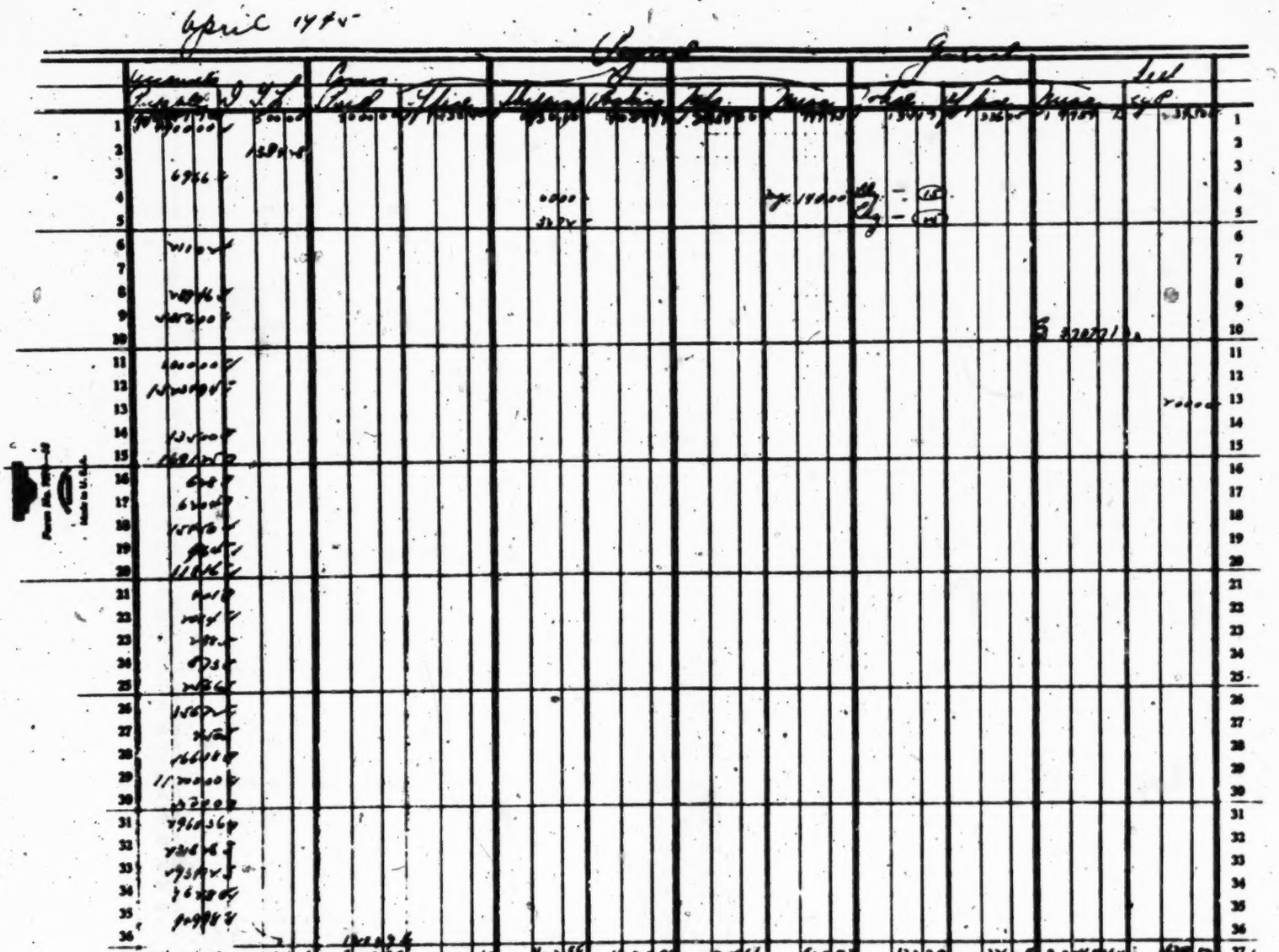
				Cash	Amount	Freight Allowed	P & R	Check No.			
37471	May 7	Void									1
72		Blue Ribbon Trucking Co									2
73		Erie R.R. Co									3
304		National Co									4
75		Penn. R.R. Co									5
76		Eatmore Food Products									6
77		Kurtz Trucking Co									7
78	9	Ray Hankelmeyer									8
79		Cash - White R.R. Co									9
80		Cash - Keystone Dist. Co									10
81		Penn-Ohio Forg. Co				7401					11
82		Cash - Penn-Ohio Forg. Co									12
83		Cash									13
84		Acme Fast Freight									14
85		Consolidated Transport									15
86		Balt. & Ohio R.R. Co									16
87		National Co									17
88		Penn. C & G									18
89		Universal Co									19
90		Victor Trucking Co									20
91		Keystone Feeds									21
92		Eatmore Food Products									22
93		General Commercial Acceptance Co									23
94		Berry Biscuit Corp									24
95		Cash									25
96		Cash - Maxwell Mfg Co									26
97		Clare & Co				7401					27
98		Maxwell Mfg Co									28
99		Cash - Clare & Co									29
100	10	Cash - Keystone Dist.									30
101		Blank & Co									31
02		Cadwell Packing Co									32
03		General Commercial Acceptance Co									33
04		W.L. Smith						90		1490	34
05		J.M. Mason						100		1570	35
06		R. Stone						100		1670	36
37											37

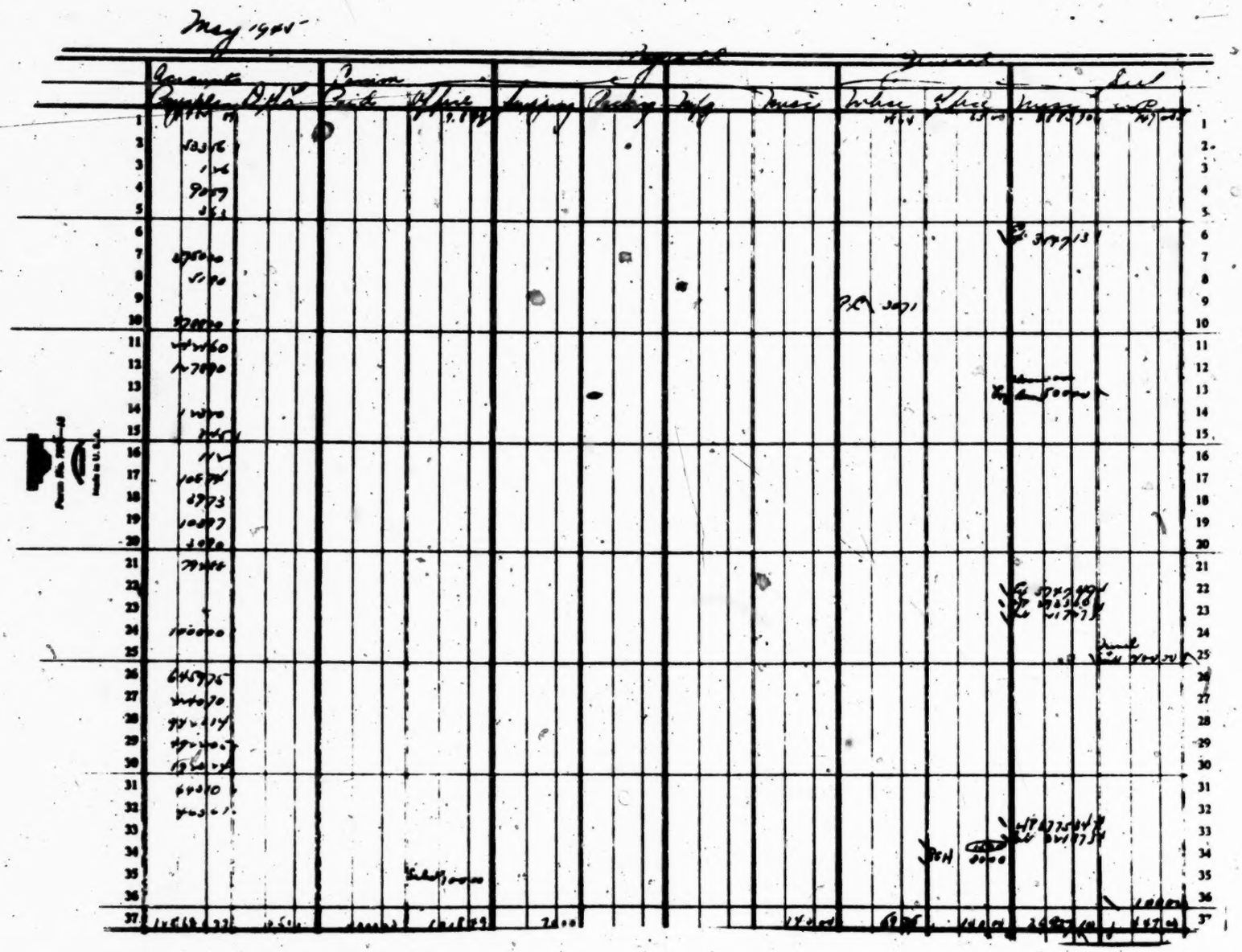
[fol. 269]

DEFENDANTS' EXHIBIT 28B

Cash Disbursements



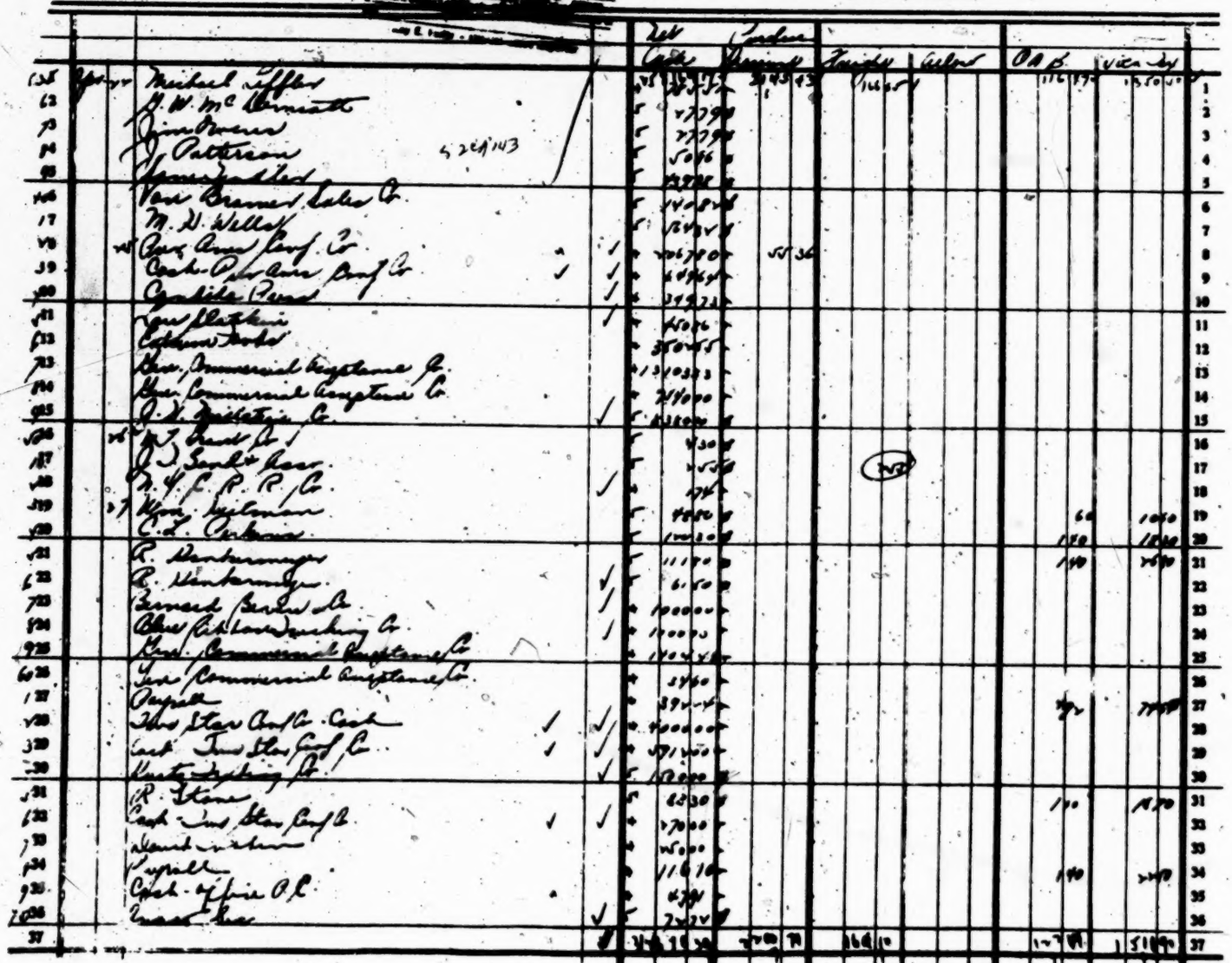


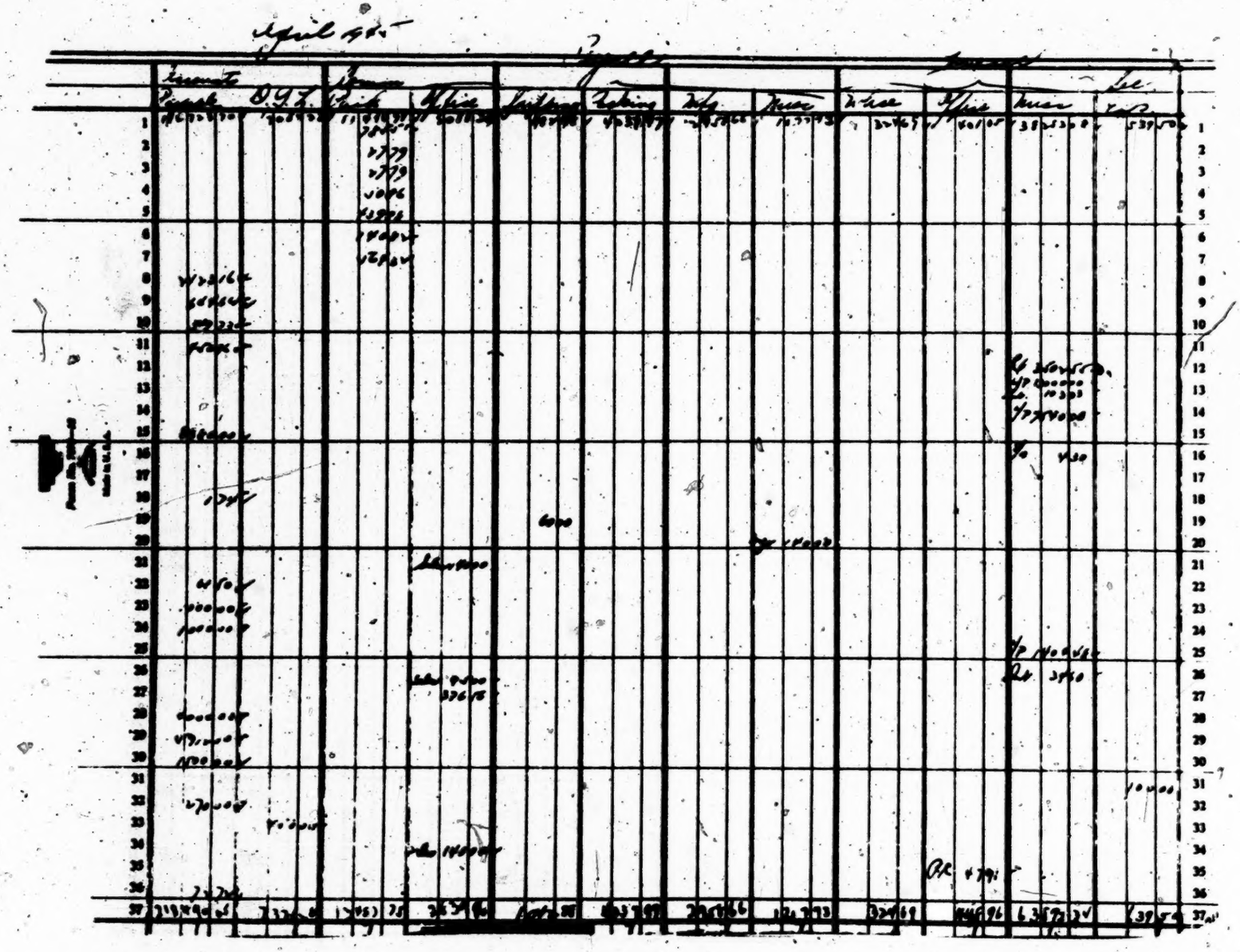


[fol. 273]

DEFENDANTS' EXHIBIT, 28D

Cash Disbursements





DEFENDANTS' EXHIBIT 29A

Sheet No._____ Account No._____

Terms NAME National harvest tools

Rating ADDRESS

Credit Limit

DATE	ITEMS	FOLIO	DEBITS	DATE	ITEMS	FOLIO	CREDITS
1944				1944			
Dec 14		C16 A	360000	Feb 10			
24		C16 A	40000	24		C16 A	360000
Nov 13	3 2 2 1 4 3	C16 B	6 1 4 2 5	13			6 1 4 2 5
20		C16 B	10 1 4 3	20		C16 B	10 1 4 3
Dec 5		C16 H		11			1 5 4 0 0
7			Dec	4			6 6 8 1 2
		C16 E	66812	7		C16 H	19480
20		C16 G	25731	20		C16 E	16830
20		C16 F	14830	20		C16 G	25731
19	Credit	B36	1000	20		C16 F	14830
31	Balance		31700				
			1166164	1944			1166164
1945							
Jan 3	Credit	C16 D	30000	Jan 3			
3		C16 A	179000	3			
9		C16 A	190660	9			
18		C16 C	66464	18			
17		C16 C	300000	25			
23		C16 C	400000	23			
27		C16 B	52464	27			52464
27		C16 E	8400	27			8400
31		C16 F	10000	31			10000
31		C16 G	5000	31			5000
31		C16 H	10000	31			10000
31		C16 K	38100	31			38100
Feb 15	Credit	C43 J	1 5 3 3 0	15			
15		C43 G	10800	15			
15		C43 E	38100	Mar 6			
23		C43 N	18990	23			
23		C16 K	7200	23			
			1531064				1531064

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No. 6048—Form A
Phoenix Stationery & Printing Co.
1133 Broadway, New York
WATKINS 9-6480-1

Account No._____ Sheet No._____

NAME Michael Pierce Terms

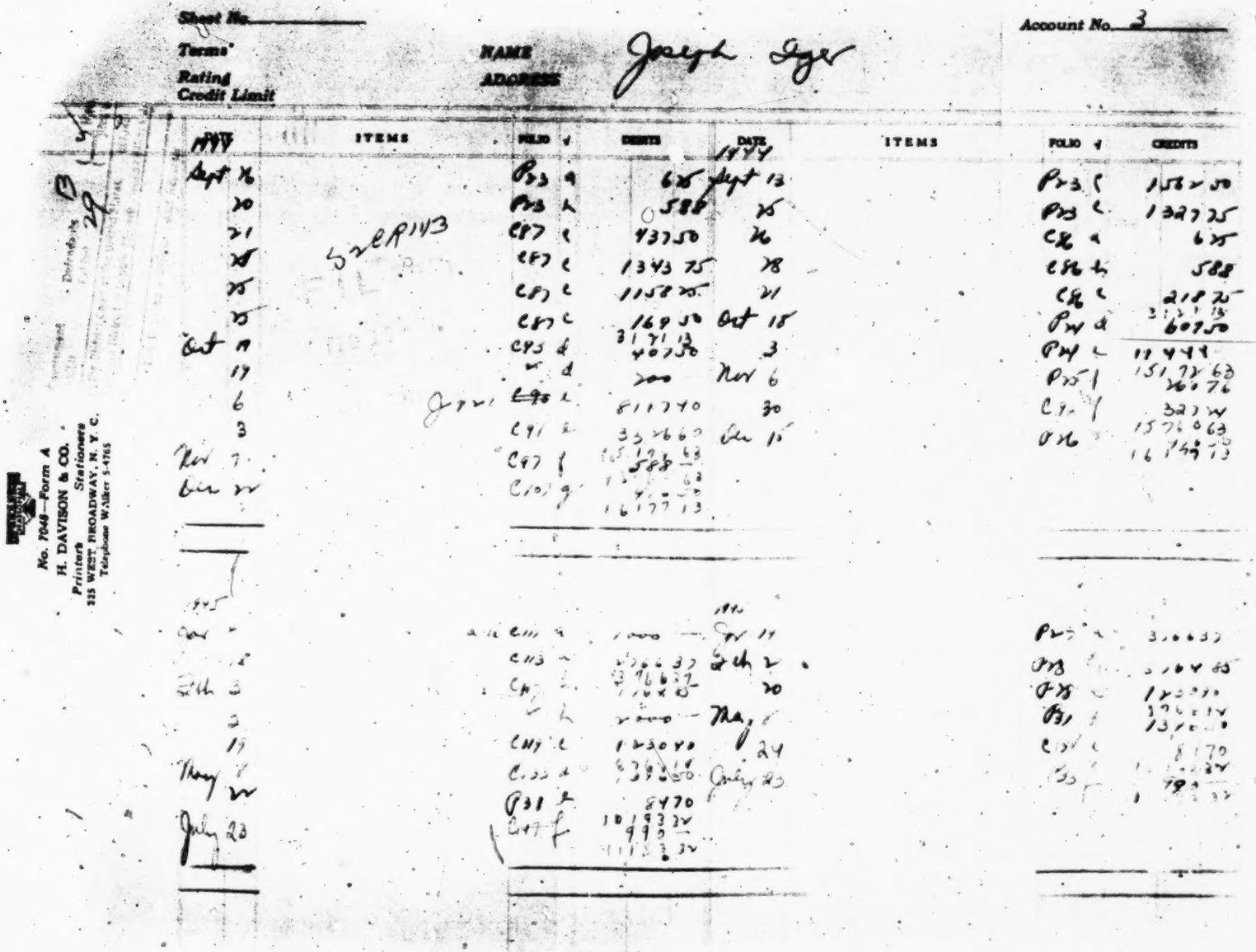
ADDRESS Rating

Credit Limit 294

DATE	ITEMS	FOLIO	✓	DEBITS	DATE	ITEMS	FOLIO	✓	CREDITS
1944									
Nov 6									

[fol. 277]

DEFENDANTS' EXHIBIT 29B



Sheet No. _____ Account No. 3

Terms

Rating

Credit Limit

NAME Joseph Iger

ADDRESS

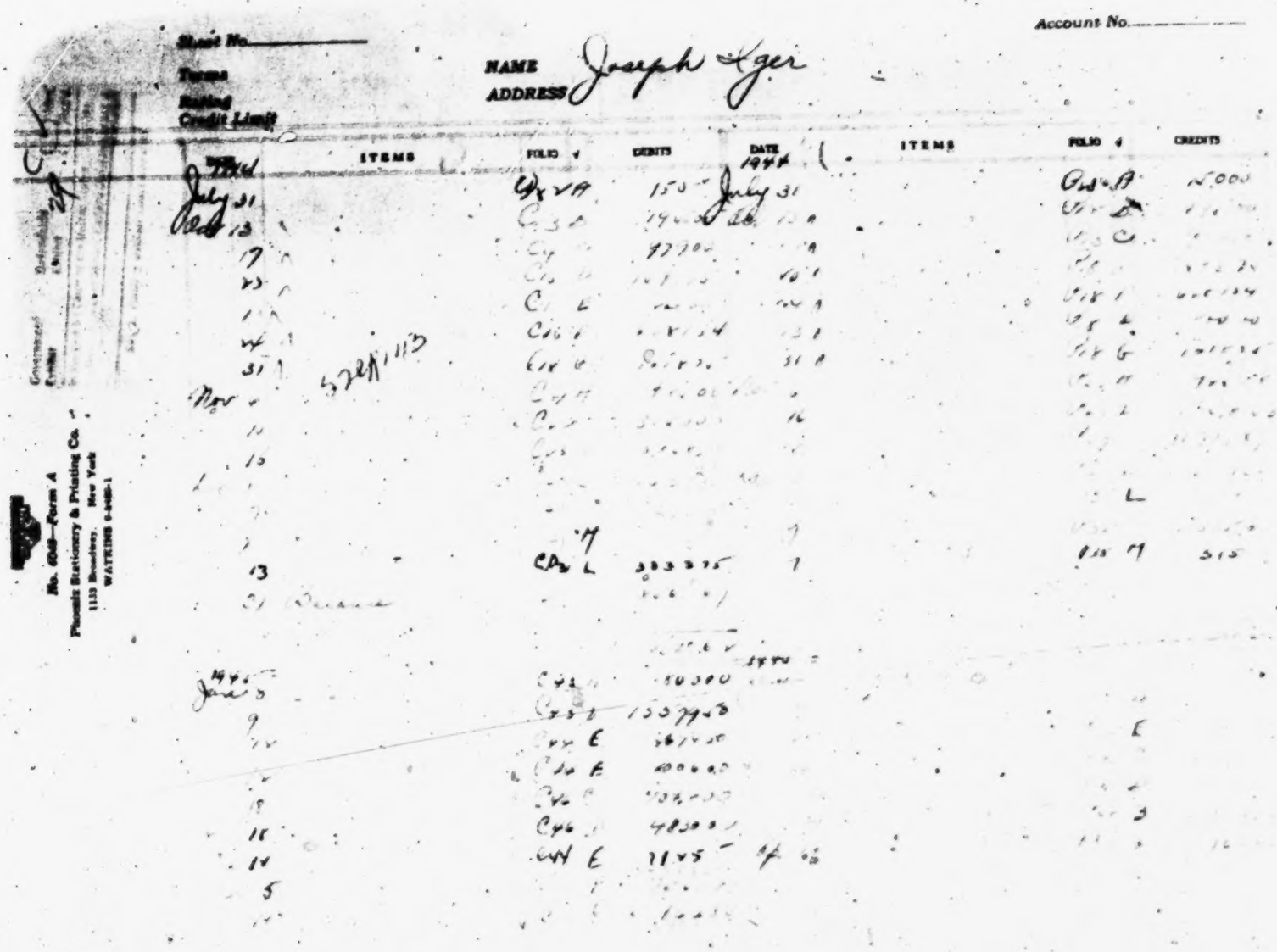
DATE 1944	ITEMS	FOLIO	✓	DEBITS	DATE 1944	ITEMS	FOLIO	✓	CREDITS
Sept 16		P23	a	625	Sept 13		P23	c	1562 50
20		P23	h	588	25		P23	c	1327 75
21	S2CR143	C87	c	437 50	26		C86	a	625
25		C87	c	1343 75	28		C86	h	588
25		C87	c	1158 25	21		C86	c	218 75
25		C87	c	169 50	Oct 15		P24	d	3121 13 / 607 50
Oct 17		C95	d	3121 13 / 407 50	3		P24	c	11444
19		2	d	200	Nov 6		P25	f	15172 63 / 260 76
6	J921	~~C90~~	e	8117 40	30		C90	f	327 24
3		C91	e	3326 60	Dec 15		P26		15760 63 / 16144 13
Nov 7		C97	f	15172 63 / 588					
Dec 22		C101	g	15760 63 / 416 50 / 16177 13					

1945					1945				
Jan 2		C111	a	1000	Jan 19		P27	a	3766 37
18		C113	a	2766 37	Feb 2		P28		3164 85
Feb 3		C117	h	3766 37 / 1164 85	20		P28	c	1230 90
3		2	h	2000	May 8		P31	f	3766 14 / 1370 50
19		C119	c	1230 40	24		C121	c	8170
May 8		C133	d	8766 14 / 1396 50	July 23		P33		1[illegible] 34 / 990
22		P31	e	8470					1[illegible] 32
July 23		C147	f	10193 32 / 990 / 11183 32					

No. 7048—Form A
H. DAVISON & CO.
Printers Stationers
225 WEST BROADWAY, N. Y. C.
Telephone WAlker 5-4765

[fol. 279]

DEFENDANTS' EXHIBIT 29C



Sheet No. _____

Terms

Rating

Credit Limit

NAME Joseph Iger

ADDRESS

Account No. _____

DATE 1944	ITEMS	FOLIO	DEBITS	DATE 1944	ITEMS	FOLIO	CREDITS
July 31		[illegible]	150	July 31		[illegible]	15,000
Oct 13		[illegible]	[illegible]	[illegible]		[illegible]	[illegible]
17		[illegible]	97700	[illegible]		[illegible]	[illegible]
23		[illegible]	[illegible]	[illegible]		[illegible]	[illegible]
[illegible]		[illegible]	[illegible]	[illegible]		[illegible]	[illegible]
24		[illegible]	[illegible]	[illegible]		[illegible]	[illegible]
31	572 [illegible]	[illegible]	[illegible]	31		[illegible]	[illegible]
Nov [illegible]		[illegible]	[illegible]	[illegible]		[illegible]	[illegible]
10		[illegible]	[illegible]	16		[illegible]	[illegible]
15		[illegible]	[illegible]	[illegible]		[illegible]	[illegible]
[illegible]		[illegible]	[illegible]	[illegible]		[illegible]	[illegible]
[illegible]		[illegible]	[illegible]	[illegible]		[illegible]	[illegible]
[illegible]		[illegible]	[illegible]	[illegible]		[illegible]	[illegible]
13		[illegible]	383375	7		[illegible]	315
31	[illegible]		[illegible]				
			[illegible]	[illegible]			
1945							
June 8		[illegible]	50000	[illegible]			
9		[illegible]	1537950				
14		[illegible]	[illegible]				
[illegible]		[illegible]	[illegible]				
18		[illegible]	[illegible]				
18		[illegible]	48300				
14		[illegible]	7145	[illegible]			
5		[illegible]	[illegible]				
[illegible]		[illegible]	[illegible]				

Governmental Exhibit 29

Defendants' Exhibit

No. 6048—Form A
Phoenix Stationery & Printing Co.
1133 Broadway, New York
WATKINS 9-8400-1

[fol. 281]

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DEFENDANTS' EXHIBIT 29D

Sheet No. _____ Account No. _____

Terms

Rating

Credit Limit

NAME Two Star Confectionery Co

ADDRESS

	DATE 1944	ITEMS	FOLIO	✓	DEBITS	DATE 1944	ITEMS	FOLIO	✓	CREDITS
55V	June 27	52CR1143	C15	a	23792	June 16		22	a	23792 ✓
601	July 5		C17	b	29120			23	b	29120 ✓
1136	Aug 16		C7	E	[illegible]	Aug			E	11440 ✓
1136	Sept 13		C3	D	16800				D	[illegible] ✓
1313	27				[illegible]				P	[illegible] ✓
1498	Oct 18				[illegible]				Q	[illegible] ✓
1515	18				[illegible]				D	[illegible] ✓
1613	30				[illegible]	Sept				[illegible] ✓
1565	25		C16	T	8720	31		Jan	E	
736	Nov 10				[illegible]	Oct				[illegible] ✓
1737	12				[illegible]					[illegible] ✓
	30				[illegible]					[illegible] ✓
1797	20				[illegible]				H	[illegible] ✓
1849	24				[illegible]					[illegible] ✓
	Dec 3	Transf from Cain Prods			159870				H	[illegible] ✓
					[illegible]					[illegible] ✓
				P	[illegible]	17				[illegible] ✓
				Q		30				[illegible] ✓
1981	7				[illegible]					[illegible] ✓
1985	8	A			[illegible]					
2083	27				[illegible]					
2109	22				[illegible]					[illegible] ✓
						6				[illegible] ✓
										[illegible] ✓
										[illegible] ✓
									R	[illegible]
									S	[illegible]
						30			S	[illegible]
						Dec 4			T	[illegible] ✓
										[illegible]

No. 6040—Form A
Phoenix Stationery & Printing Co.
1333 Broadway, New York
WATKINS 9-6420-1

Account No. _____

NAME

ADDRESS

Sheet No. 290

Terms

Rating

Credit Limit

DATE	ITEMS	FOLIO	✓	DEBITS	DATE	ITEMS	FOLIO	✓	CREDITS
Dec 31	Balance		✓						

[fol. 283]

DEFENDANTS' EXHIBIT 29E

Account No. 4

NAME Gum Products J.T.

ADDRESS

Sheet No.

Terms 29G

Rating

Credit Limit

DATE	ITEMS	FOLIO √	DEBITS	DATE	ITEMS	FOLIO √	CREDITS
1944 Dec 5	Balance		9000	1944 Dec 27		G56	9000 √
							288
							288

Defendants' Exhibit 29E

Sheet No.

Account No.

Terms

NAME

Rating

ADDRESS

Credit Limit

DATE	ITEMS	FOLIO √	DEBITS	DATE	ITEMS	FOLIO √	CREDITS
194				1944			
	565			31	Transf		

No. 6048 Form A
Phoenix Stationery & Printing Co.
1133 Broadway, New York
WATKINS 9-8480-1

[fol. 285]

DEFENDANTS' EXHIBIT 29F

Sheet No. 7 of 143

Terms

Rating

Credit Limit

Account No.

NAME Gum Products

ADDRESS 150 Orleans St
Boston, Mass.

DATE	ITEMS	FOLIO	DEBITS	DATE	ITEMS	FOLIO	CREDITS
Apr 28		CR2 B	299833	Apr 25		Exp 5 a	68
28		CR3 a	11132			a	16360
May 8		CR4 b	161460			a	88
12		CR6 B	186641	30		9 b	116293
24		CR7 B	187060	May 25		18 c	14580
June 1		CR10 C	14580	31		19 f	245
1		CR10 B	171434	31		19 B	688914
3		CR10 B	168474	5		17 g	131541
7		CR11 D	5020 -	13		11 e	11741
10		CR12 F	9x4x5	June 16		22 f	685
20		CR13 F	114615	30		22 f	571160
20		CR13 F	97150	July 17	Cash 6%	D	5020 -
9		CR14 F	2x2x46	19		Rec f	26046
July 5	Cash	CR15 F	27	July 30		Exp g	8420
6		CR17 F	138360	6	J. [illegible]	[illegible]	48816
7		CR18 C	4700	6	" " "	[illegible]	130420
11		CR18 G	3420	6	" " "	[illegible]	136756
14 Cash 6%		CR19 B	53420	6		[illegible]	21468
14		CR19 B	148403	7		[illegible]	126962
20		CR20 K	179480	14		CR6 K	91080
21		CR21 K	91080	5		CR6 K	179480
31		CR22 F	5880	21		CR7 F	5880
31 Cash & J.T. Wks			[illegible]	24		CR9 N	2110
			[illegible]	6/24		CR9 N	51074
Aug 9		CR20 P	[illegible]	16		Pay P	179991
11		CR7 Q	[illegible]	31	Cash & J.T. Wks	L	52445
16		CR6 R	[illegible]	20		Pay 9	34001
18		CR9 S	64074			Pay G	17868
			[illegible]	7	Cash & J.T. Wks	Pay G	17

No. 640—Form A
BERKSHIRE PRESS
HENRY C. DEMAREST & SONS
Printers and Stationers
3rd Ave. Corner 26th St.
BROOKLYN, NEW YORK
Printing 6-7258-59

[fol. 286]

Account No._____ Sheet No._____

NAME

ADDRESS

Terms

Rating

Credit Limit

DATE	ITEMS	FOLIO	✓	DEBITS	DATE	ITEMS	FOLIO	✓	CREDITS

[fol. 287]

DEFENDANTS' EXHIBIT 296

Sheet No. _____

Terms

Rating

Credit Limit

NAME Gum Products Inc

ADDRESS 150 Lafayette St Boston, Mass

Account No. J.T.

DATE	ITEMS	FOLIO	DEBITS	DATE	ITEMS	FOLIO	CREDITS
1944 June 7/14	Transfer from J.P.L. 7/17	CR 11	5020	July 6		P 5	11881
		CD 19 n	53445	8		8 v 5	53402
29						8 v 5	13556
			44402	14		P 5	5100
				4[illegible]		P 5	51024
			5[illegible]	21		P 5	99104
Sept 31			[illegible]			[illegible]	[illegible]
Oct 31			5[illegible]			[illegible]	[illegible]
			05			[illegible]	120001
						[illegible]	[illegible]
						[illegible]	[illegible]
						[illegible]	[illegible]

[fol. 288]

Account No. 4

NAME [illegible] Products J. T.

ADDRESS

Sheet No.

Terms 296

Rating

Credit Limit

DATE	ITEMS	FOLIO ✓	DEBITS	DATE	ITEMS	FOLIO ✓	CREDITS
1944 [illegible]			[illegible]	1944 [illegible]		[illegible]	[illegible]
[illegible]			[illegible]	[illegible]			[illegible]
[illegible]			[illegible]	[illegible]			[illegible]

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(fol 289)

DEFENDANTS' EXHIBIT 29H

Sheet No. _____ Account No. _____

Terms

Rating

Credit Limit

NAME Tum Products

ADDRESS

DATE	ITEMS	FOLIO ✓	DEBITS	DATE	ITEMS	FOLIO ✓	CREDITS
[illegible]		[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	65
[illegible]		[illegible]	[illegible]			[illegible]	[illegible]
[illegible]		[illegible]	[illegible]	[illegible]		[illegible]	[illegible]
[illegible]		[illegible]	[illegible]	[illegible]		[illegible]	[illegible]
				[illegible]	[illegible]	[illegible]	[illegible]
				[illegible]	[illegible]	[illegible]	[illegible]

No. 6048 Form A

Phoenix Stationery & Printing Co.

[illegible] Broadway New York

WATKINS [illegible]

[fol. 290]

DEFENDANTS' EXHIBIT 31

Currency Account
Income

Date		Amount	Source
Mar 31		540-	Leftover from one of Mr Lubben's transactions
-		60-	Advance by Mr Lubben
		1097 13	Average on mdse (Dexhone) sold to Volpt Chewing Gum Co
	Iger - raisins	856 187	
	Exchange a/c	4300-	
	Two Star Confectionery	263 66	Payments by D.L. to these vendors
	Blue Ribbon Trucking (Dexhone)	4900-	
	Natl Processed Foods	135-	
	Mike Cohen	1691 25	
	Sinders Corrugated Box	200-	
	R Stone	483 03	Peanut hearts
	Pur Ams	2400-	150 bags sugar @ $16.-
	D.L.	114-	Profit on deal with Berty
	D.L.	235 84	" " cocoa deal
		[illegible]	
	Pur Ams	3200-	200 bags sugar @ 16.-
	Two Star Confectionery	4000-	
	R Stone	34704 28 14950	peanut hearts
	Berty	4798-	cocoa
	D.L.	240-	profit on cocoa deal
		3[illegible]	
	D. Lubben	15000-	
		[illegible]	
May 17	Rubinson	5493-	1 carload candy
21	D. Lubben	600-	
21	J. Wechtel	365 50	gumdrops
24	Rubinson	3000-	advance against mdse
24	Pur Ams	3150-	197 bags sugar @ 16.-
25	Joe Reiter	23 68	6648 lb Dexhone @ 3½
	TOTAL	7086 46	

Disbursed in B. Bercu analysis for May

34704 28	Receipt prior to 4/30
30957 30	Disbursements prior to 4/30
3746 98	Balance per B Bercu 5/14

[fol. 292]

DEFENDANTS' EXHIBIT 32

ACCOUNT NO. 61

SHEET NO. _____

RATING

BUSINESS

TERMS

CREDIT LIMIT

NAME S. Lubber Drawing

ADDRESS

DATE 1945		ITEMS	FILE	✓	DEBITS	DATE 1945		ITEMS	FILE	✓	CREDITS
Jan	31		Cy	✓	19269 -	Feb	29		J6	✓	154559
Feb	29	25879.21	LD63	✓	8155 80 / 27426 80	May	31		J20	✓	1000 - / 154559
Mar	31	33238.36	LD76	✓	7359 15 / 34786 95						
Apr	30	40572.60	LP86	✓	7334 28 / 42118 23						
May	31	40574.60	LP100	✓	1000 - / 43118 23						

292

32

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FORM 1040-B

[fol. 294]

DEFENDANTS' EXHIBIT 33

Street No. _____ Account No. 100

Terms _____ NAME David G. Lubber, Special

Rating _____ ADDRESS _____

Credit Limit _____

DATE		ITEMS	FOLIO	✓	DEBITS	DATE		ITEMS	FOLIO	✓	CREDITS
Oct	31		[illegible]	5	1840 —	Jan	31		[illegible]	5	578
	31		[illegible]	5	50 73						
	31		[illegible]	5	3958 12						
Nov	30		[illegible]	5	4848 85						
					133 44						
Dec	31		[illegible]	5	[illegible]						
					2605 61						
	1		[illegible]	5	14153 77						
1946					41941 69						
Jan	31	3731 [illegible]	[illegible]	5	15580 15						
					37341 84						
Feb	28	4554 3.37	[illegible]		8407 33						
					45549 15						

Government Defendants 33

No. 7040—Form A

Phoenix Stationery & Printing Co.
1133 Broadway, New York
WATKINS 9-0400-1

[fol. 296]

DEFENDANTS' EXHIBIT 34

Street No. _____ Account No. 10

Terms

Rating

Credit Limit

NAME

ADDRESS

H. S. Lubber Drawing

DATE		ITEMS	FOLIO	✓	DEBITS	DATE		ITEMS	FOLIO	✓	CREDITS
June	30	[illegible]	011		59600 –	July	11		[illegible]		[illegible]
[illegible]	30	[illegible]	049		4100 –	[illegible]	30		[illegible]		2500 –
	30	[illegible]	[illegible]		[illegible]		30		[illegible]		[illegible]
Oct	11	[illegible]	[illegible]		[illegible]						
Nov	30	[illegible]	[illegible]		6981 99						
	30		215		[illegible]						
Jan	31	[illegible]	[illegible]		[illegible]						
	✓	[illegible]	✓		[illegible]						
	✓		[illegible]		[illegible]						

34

No. 7044 Form A
Phoenix Stationery & Printing Co.
1133 Broadway, New York
WATKINS 9-8400-1

[fol. 298]

DEFENDANTS' EXHIBIT 35

Sheet No. _____ Account No. 84

Terms NAME DAVID G. LUBBEN, SPECIAL

Rating ADDRESS

Credit Limit

DATE 1946		ITEMS	FOLIO	✓	DEBITS	DATE 1946		ITEMS	FOLIO	✓	CREDITS
Mar	31		CD5	"	10000 -	Mar	31		CR3	"	7134 33
	31		P5	"	2314 08	Apr	30		CR7	"	1700 -
Apr	30		P17	"	2914 70	May	31		CR45	"	5000 -
	30		CD15	"	23979 77	June	1		J7	"	1330 -
May	31	30 [illegible]	CD25	"	4853 45		1		J8	"	38488 -
June	10		P19	"	4028 58		1		J10	"	2714 -
	10		P74	"	1467 44	July	31		J [illegible]	"	5[illegible]
	10	[illegible]	[illegible]	"	59459 24	[illegible]	31		CR135		205 79
July	31		CD49	"	8807 81	Sept	30		CR158		38 -
	31		[illegible]	"	889 03	Nov	30		[illegible]	"	1488 02
	31	[illegible]	J [illegible]	"	14[illegible]		30		J[illegible]	"	35348 30
Aug	31		[illegible]		7500 -	Dec	31		J46E	"	14354 91
	31		[illegible]		10[illegible]	1947 Jan	31		[illegible]		9600 -
	31		J[illegible]		500	Feb	28		[illegible]		6000 -
Sept	30		[illegible]		300 -	"			J93		10416
	30		[illegible]		13[illegible]	"			"		1022 00
Oct	31		[illegible]		5[illegible]	"			J103		14503 00
	31		[illegible]		14[illegible]	"			J105		41294 12
	31	107831.10	[illegible]		[illegible]	"			"		1671 90
Nov	30		[illegible]	"	500 -	"			"		3600 00
	30		[illegible]	"	14[illegible]						186368 65
	30		[illegible]	"	[illegible]						
	30		[illegible]	"	[illegible]						
Dec	31		[illegible]	"	[illegible]						
	31		[illegible]	"	[illegible]						
	31		[illegible]	"	[illegible]						
	31	[illegible]	[illegible]	"	[illegible]						
[illegible]	31		[illegible]		[illegible]						
	31		[illegible]		[illegible]						

RUBCO FORM 181

[fol. 299]

Account No. 84

NAME David G. Lubben - Special

ADDRESS

Sheet 1

Terms

Rating

Credit Limit

DATE		ITEMS	FOLIO	✓	DEBITS	DATE 1917		ITEMS	FOLIO	✓	CREDITS
[illegible]	28		[illegible]		203 839 55	[illegible]	28	✓	J 68		186 368 68
	28		[illegible]		343 04		28	✓	J 70		19 104 93
		62,118.91	[illegible]		[illegible]			✓	J 73		438 79
			J 86		205 405 31			✓	J 75		8 198 00
					32 00			✓			343 15
			J 110		875 00			✓			31 00
		BALANCE	✓		21[illegible] 189 31			✓	76		4 08
					15 553 62			✓			1 109 17
								✓			412 76
								✓	77		45 70
								✓	J 78		1 74
								✓	J 79		57 91
								✓			889 38
								✓			9 58
								✓	J 80		555 00
								✓			9 00
								✓	J 81		275 66
								✓			20 00
								✓	J 82		302 22
								✓	J 84		1 466 25
								✓	J 91		170 76
								✓	95		79 00
								✓	95		100 00
								✓	J 199		875 00
								15,553.62	✓		1 000 00
					229 740 93						229 740 93
[illegible]	30		[illegible]		400	[illegible]	1	BALANCE	✓		15 553 62
[illegible]	30		[illegible]		300		30	✓	[illegible] 30		17 000
	30		[illegible]		9		30	✓	[illegible]		[illegible]
[illegible]	30		[illegible]		500	[illegible]	30	✓ 40997.79	[illegible]		[illegible]
	30		[illegible]		[illegible]			[illegible]			[illegible]

[fol. 300]

SHEET NO

RATING

CREDIT LIMIT

TERMS

NAME David G Gubbins Special

ADDRESS

ACCOUNT NO. 84

DATE	ITEMS	FILE	DEBITS	DATE	ITEMS	FILE	CREDITS
[illegible]			1089				41395
May 31		CD30	4585	May 31	25,134.70	J31	330
		P27	417 60	June 30	6,875.73	J32	333
		J24	550	July 31	19,090.83	J34A	41848
			6361 60		19,365.83		27500
June 30		P33	58 55	Aug 31		CR110	1886
June 30		CD44	8255 47		7,824.07	J40	10777 67
30		J34	275		6873.79	J42	5070
July 31		P430	14950 62	Nov 30	26564.43	J74	3769 81
31			90		1066.64		5879
		CD54	7697 40	Dec 31		J45	50000
Aug 31		P49	7735 02			J46	50000
		CD64	607 60		080.98	46	20000
		J40	7564 42		641 98		61022 34
Sept 30		CD72	1015 00				
" 30		P58	945 28				
Oct. 31		CD81	6196 34				
" 31		P66	280 67				
		J50	28 69				
			2650 70				
			3000000				
	915 76	50	25000				
31		J51	5675 90				
31	1665 76	51	50000				
Nov 30		CD88	75000				
Dec 31		CD92	5750 90				
		93	55000				
Jan 31		CD98	63566				
		J58	5894 36				
Feb 29	1000	CD103	19000				
			1749 00				
			6038 36				
			25500				
			6170 36				

DEFENDANTS' EXHIBIT 36

Sheet No._____ Account No._____

Terms

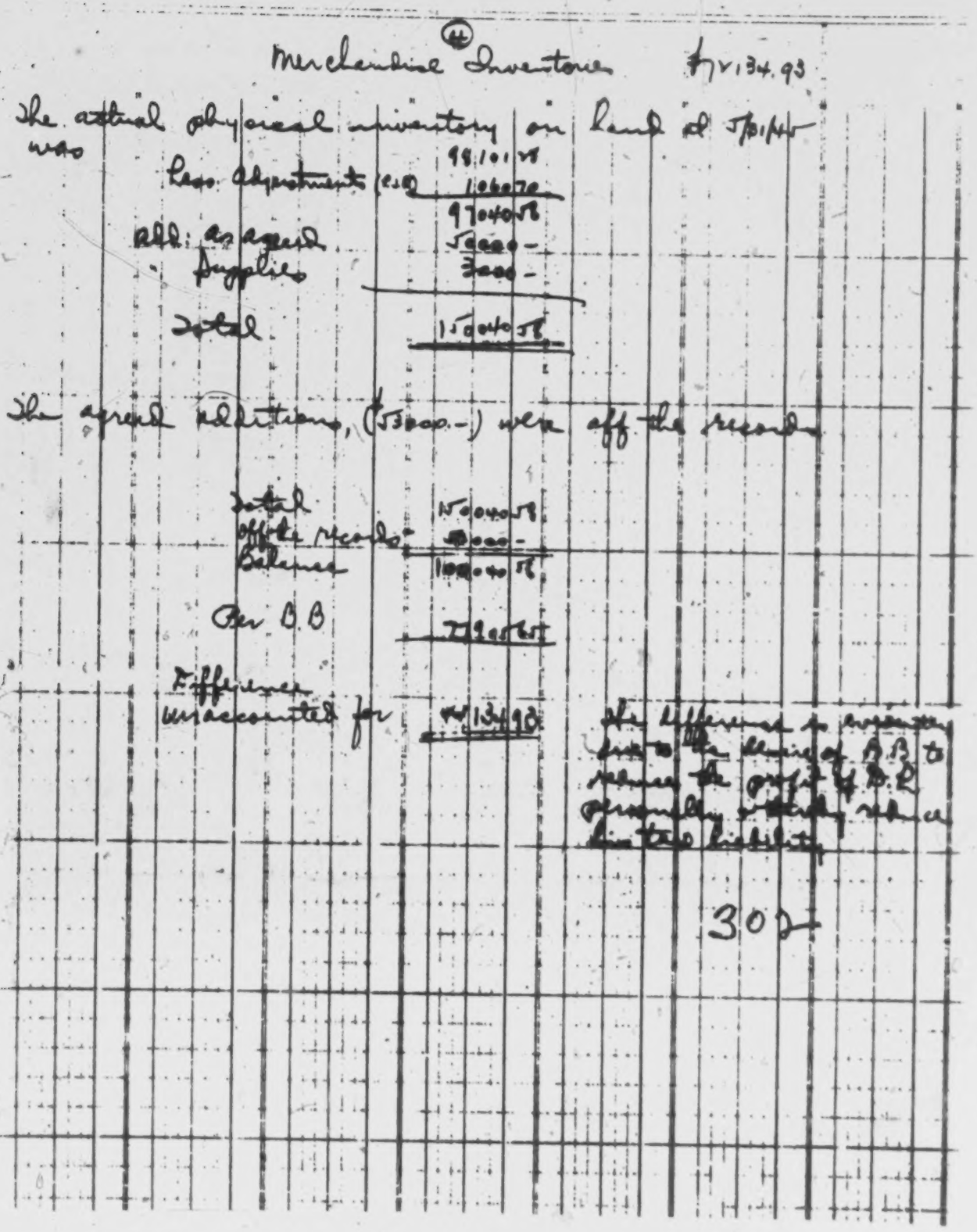
Rating

Credit Limit

NAME Loew & Lebenger

ADDRESS

DATE	ITEMS	FOLIO	✓	DEBITS	DATE	ITEMS	FOLIO	✓	CREDITS
1941					1941				
Oct 1				7250					
30									



Calsum Food Products Co

(4)

Merchandise Inventories $72,134.93

The actual physical inventory on hand at 5/31/45 was

	98101 28
Less Adjustments (C.S.)	1060 70
	97040 58
Add: as agreed	50000 -
Supplies	3000 -
Total	150040 58

The agreed additions, ($53000.-) were off the records

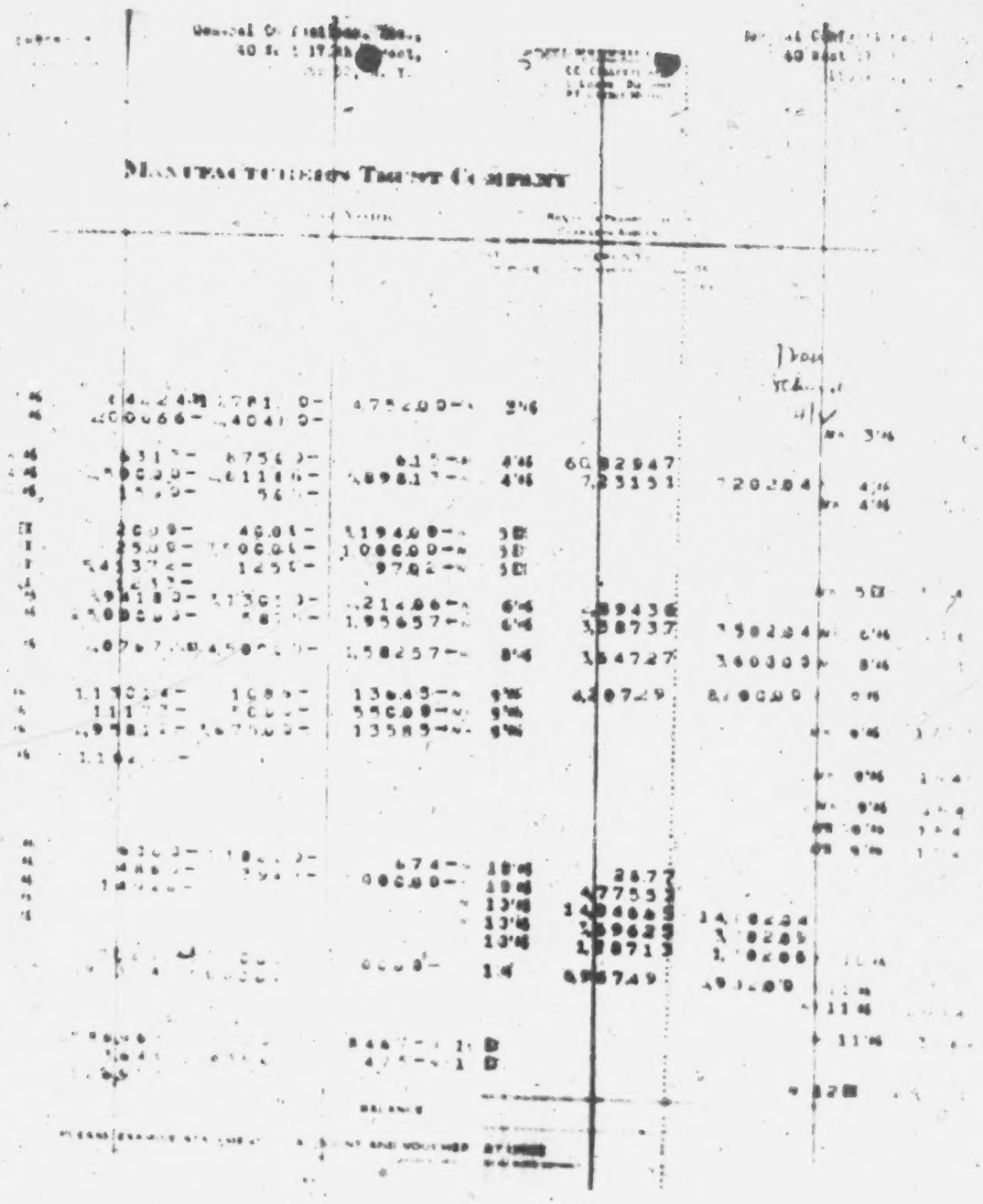
Total	150040 58
Off the records	50000 -
Balance	100040 58
Per B.B	77905 65
Difference unaccounted for	22134 93

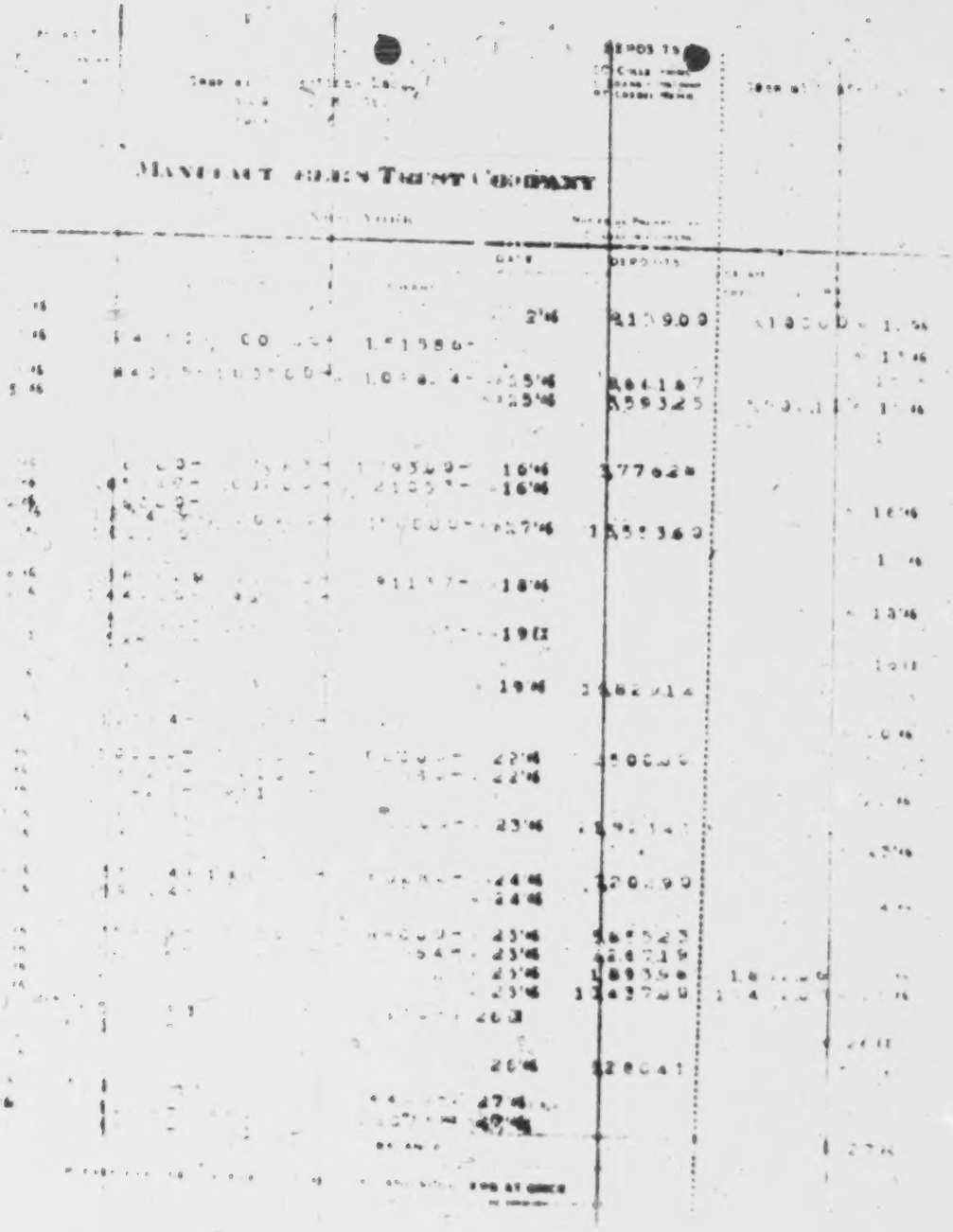
The difference is evidently due to the desire of B.B. to reduce the profit of D.L. personally & thereby reduce his tax liability

302

[fol. 303]

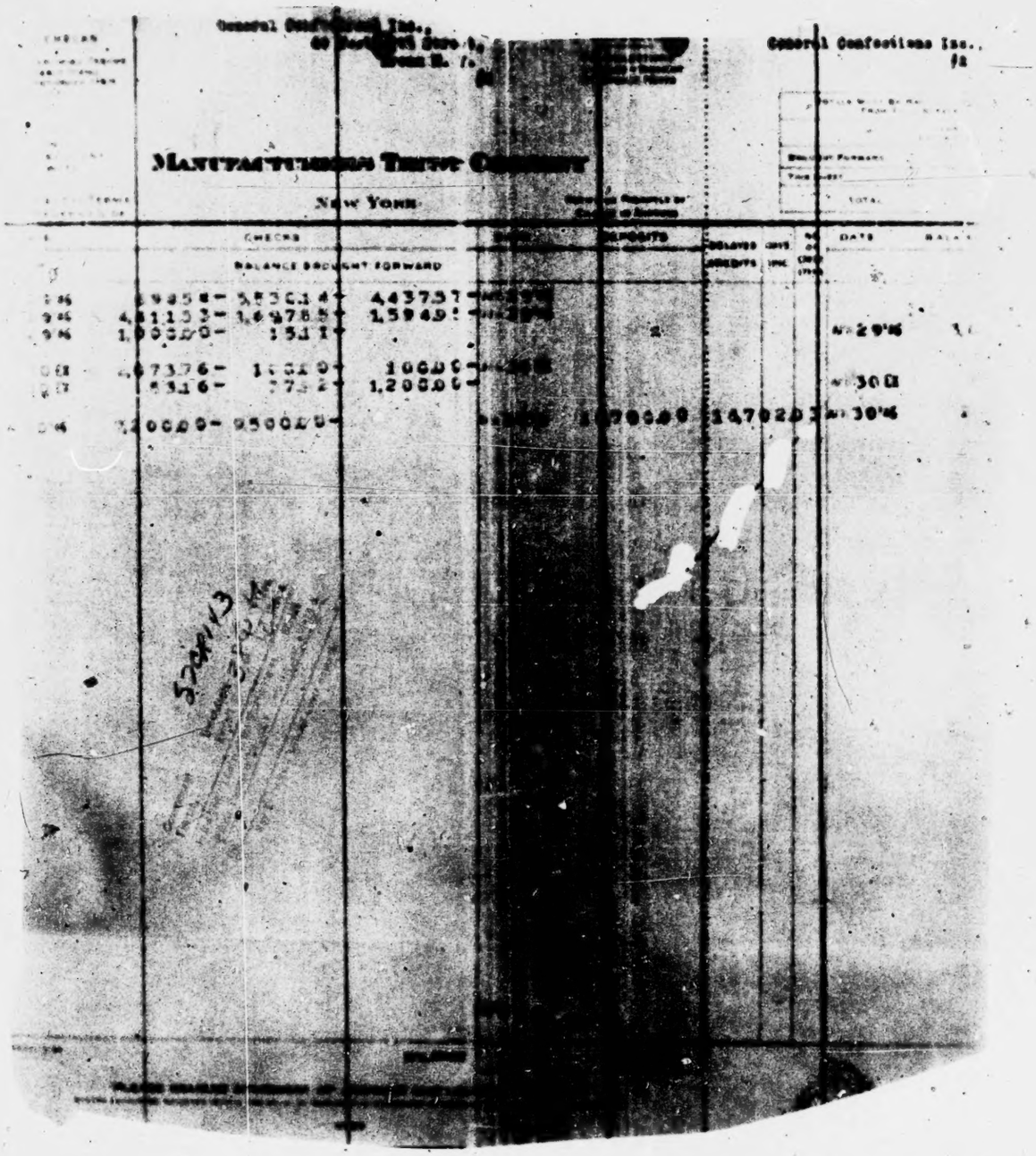
DEFENDANTS' EXHIBIT 38A



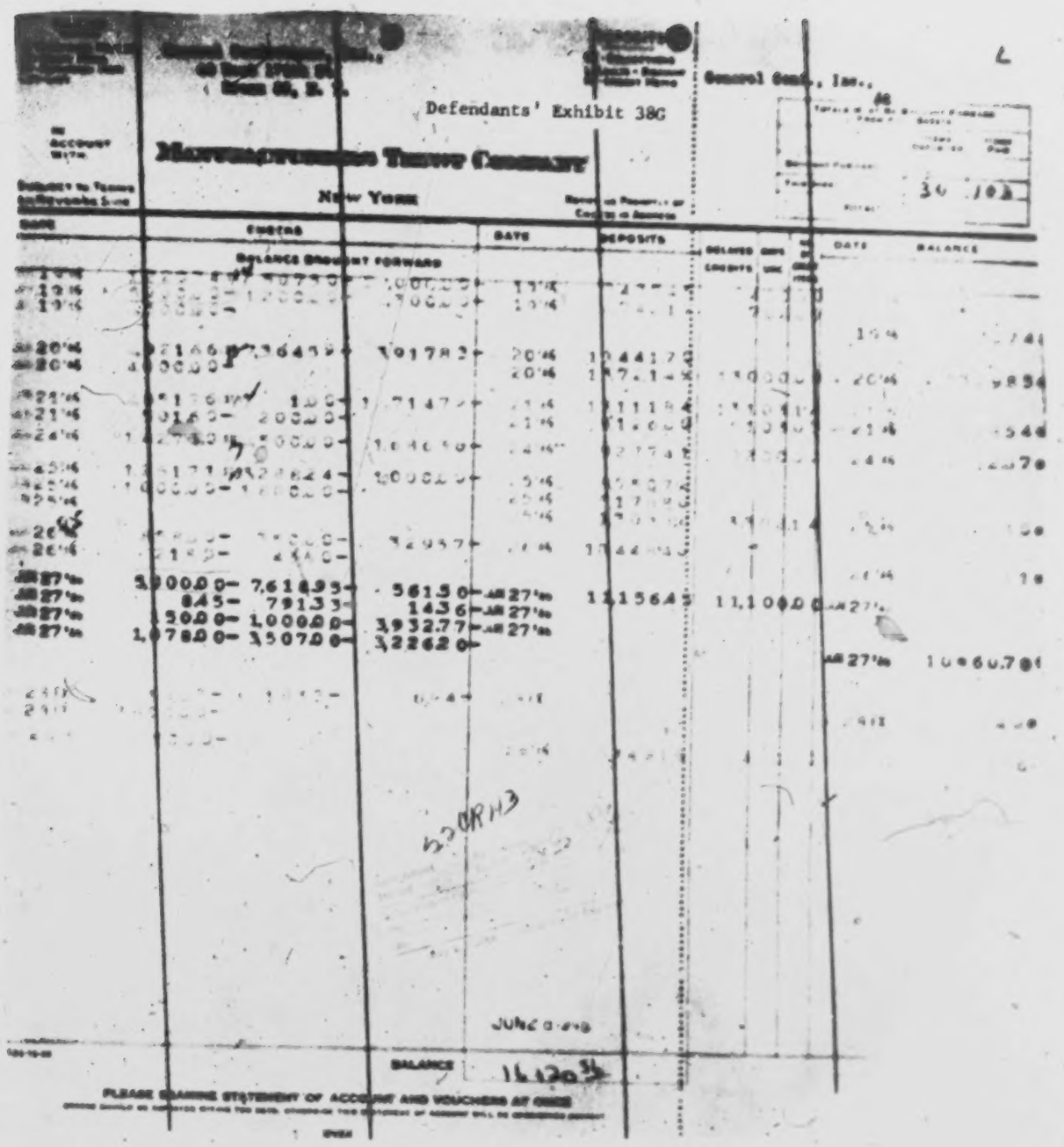


[fol. 305]

DEFENDANTS' EXHIBIT 38C



DEFENDANTS' EXHIBIT 38G



Defendants' Exhibit 38H

Manufacturers Trust Company

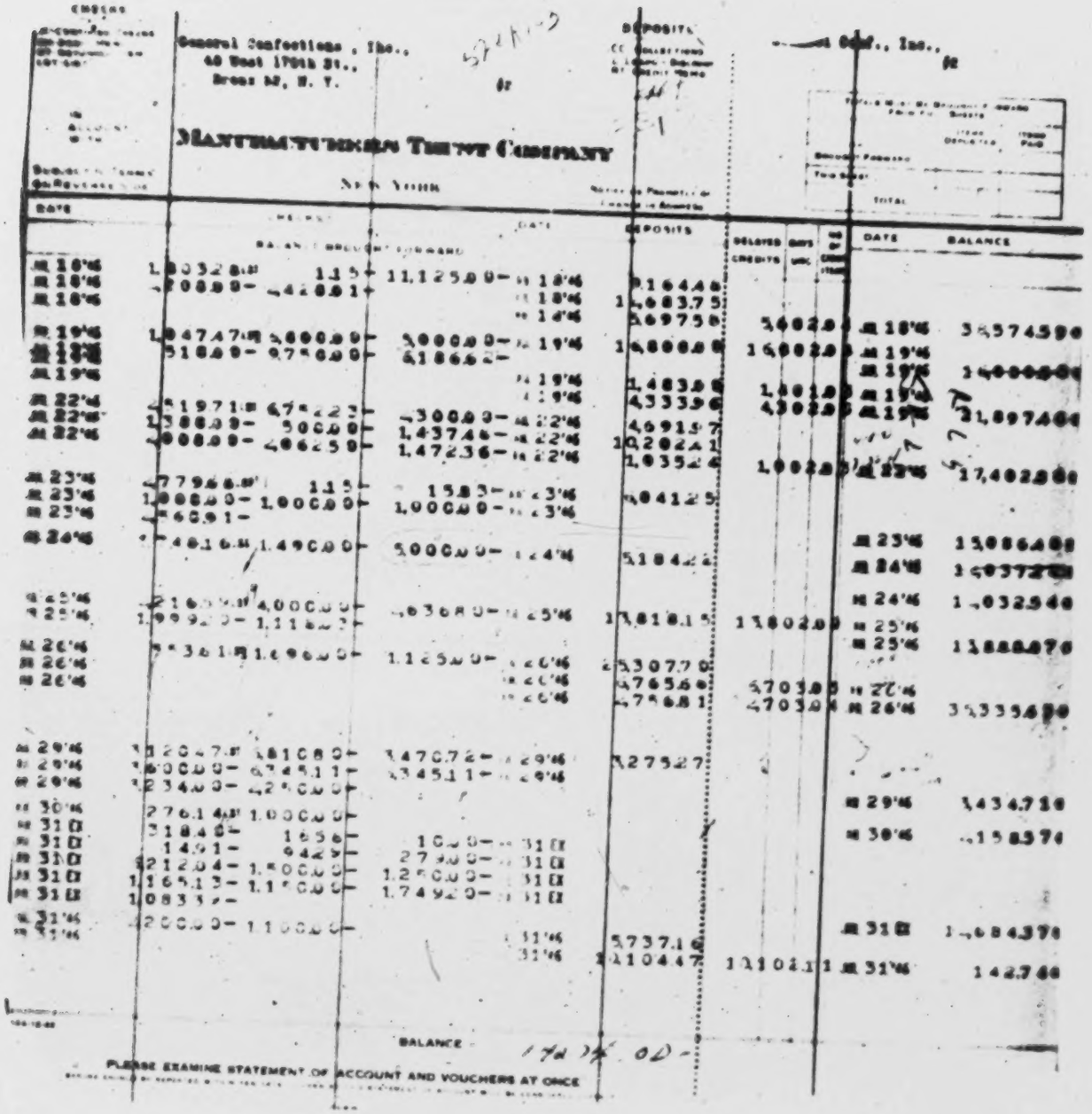
New York

Checks				Deposits			Balance
Balance Brought Forward							
1 1%	1,2[illegible]53.38	1,540.69	1,637.56	1 1%	3,[illegible]5[illegible]1.40	3,[illegible]	1 1%
1 1%	3,000.00			1 1%	2,[illegible]3[illegible]1.23	2,[illegible]2[illegible]1.7	1 1% 43,569.56
2 2%	2,000.00	1,000.00	1,000.00	2 2%	10,192.52		
2 2%	1,729.00	14.26					2 2% 27,022.82
3 3%	1,933.13	3,104.92	2[illegible],000.00	3 3%	9,758.00	9,701.03	3 3%
3 3%	1,[illegible]00.00	1,200.00	4,328.75	3 3%	8,100.00	8,101.03	3 3%
3 3%	4,587.50	1,200.00	1,410.00				3 3% [illegible]
3 3%	26.26						3 3% 3,582.26
5 5%	3,[illegible]04.58	6,930.00	4,748.50	5 5%	10,987.20		
5 5%	1,162.86						5 5% 423.52
8 8%	969.66	6.51	4,500.00	8 8%			
8 8%	21.87	565.60					8 8% [illegible],640.12
9 9%	1,939.98	3,267.36	1,000.00	9 9%	50,000.00		
9 9%	1,000.00			9 9%	11,027.80		9 9% 34,180.34
10 10%	550.73						
10 10%	1,840.42	10,436.52	6,600.00	10 10%	10,606.63		
10 10%	2,500.00	1,000.00	1,500.00	10 10%			
10 10%	1,387.52						10 10% 24,971.78
11 11%	2,567.55	5,048.58	7,050.00	11 11%	19,769.86	19,702.0[illegible]	11 11%
11 11%				11 11%	14,343.05	14,302.1[illegible]	11 11% 40,418.58
12 12%	632.39	1,500.00		12 12%	5,181.12		12 12% 43,467.31
15 15%	3,390.39	1,000.00		15 15%	17,531.52		15 15% [illegible]
15 15%	2,606.50	1,887.50	1,020.00	15 15%			
15 15%	1,000.00	1,808.96	4,145.90	15 15%			
15 15%	2,622.00	2,603.66	2,434.32	15 15%			
15 15%	1,000.00	2,200.00					15 15% 25,279.58
16 16%	2,556.74						
16 16%		14,400.00	1,800.00	16 16%	10,271.26		
16 16%	1,000.00	1,000.00	1,000.00	16 16%	14,400.00		
16 16%	2,787.60			16 16%	4,664.53	4,602.39	16 16%
16 16%				16 16%	989.00	902.03	16 16% [illegible]
							16 16% 31,060.03
17 17%	354.77	1,086.80	3,528.00				
17 17%	2,254.39			17 17%	4,742.15	5,002.10	17 17% [illegible],578.21

BALANCE 28,578.[illegible]

PLEASE EXAMINE STATEMENT OF ACCOUNT AND VOUCHERS AT ONCE

Defendants' Exhibit 38H



General Confections, Inc.,
40 East 170th St.,
Bronx 52, N. Y.

MANUFACTURERS TRUST COMPANY

New York

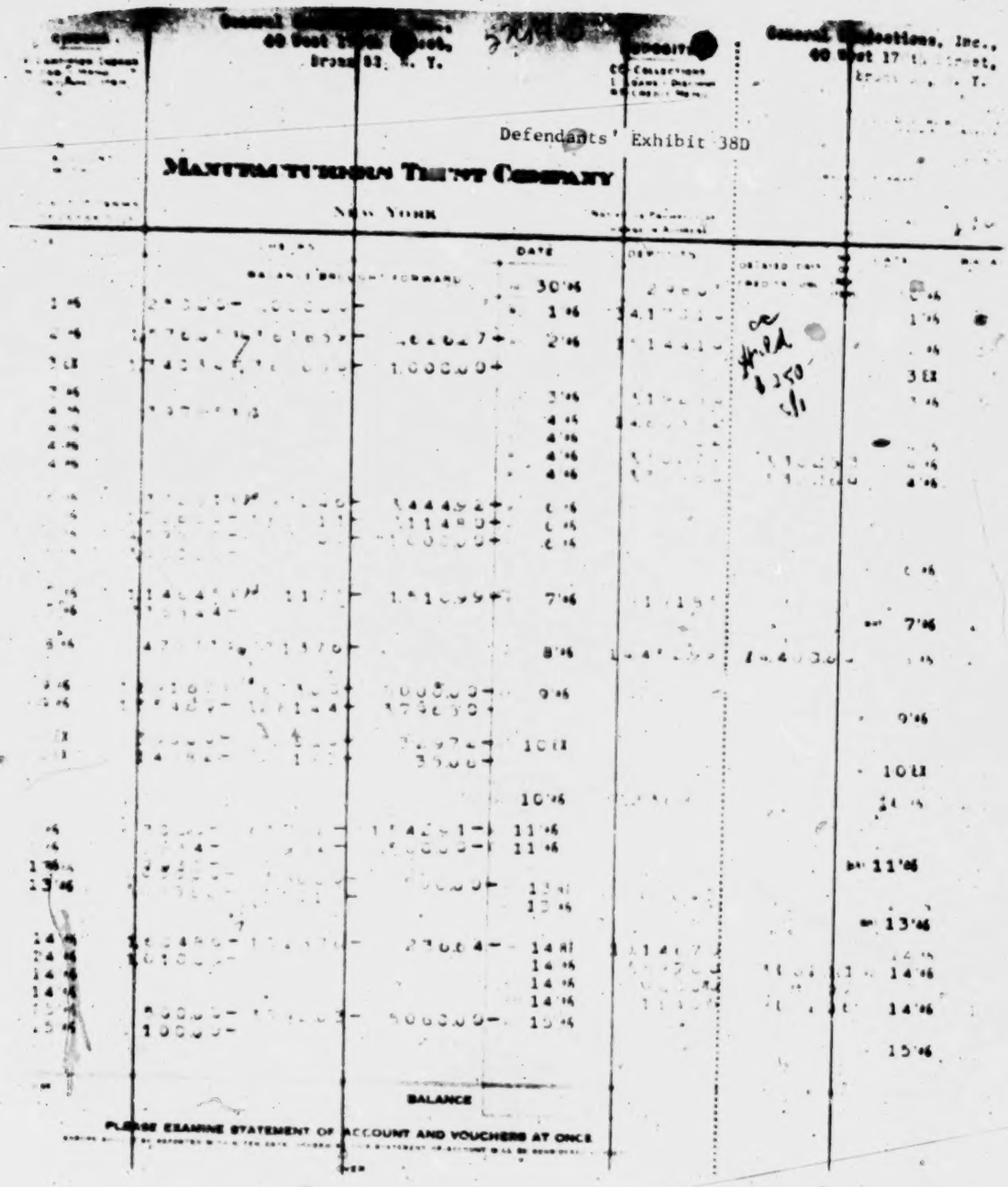
DATE		DATE	DEPOSITS	DELAYED CREDITS	DATE	BALANCE
M 18'46	1,80328.81 115-	11,12589-	M 18'46	9164.48		
M 18'46	208.89-	442.81-	M 18'46	1,683.75		
M 18'46			M 18'46	569.75	3602.8	M 18'46 38,574.90
M 19'46	1,847.47	3,000.00-	M 19'46	1,800.00	1,800.00	M 19'46
M 19'46	518.89-	975.00-	618.68-			M 19'46 1,400.00
M 19'46			M 19'46	1,483.96	1,483.96	M 19'46
M 22'46	4,197.18	675.23-	M 19'46	4,333.96	4,333.96	M 19'46 31,897.66
M 22'46	1,388.89-	500.00-	300.00-	M 22'46	4,691.57	
M 22'46	208.89-	486.59-	1,437.46-	M 22'46	10,204.21	
			1,472.36-	M 22'46	1,935.24	1,935.24 M 22'46 17,402.86
M 23'46	279.68	115-	15.83-	M 23'46	484.25	
M 23'46	1,388.89-	1,000.00-	1,000.00-	M 23'46		
M 23'46	460.91-					
M 24'46	486.84	1,490.00-	5,000.00-	M 24'46	5,184.25	
						M 23'46 15,086.48
						M 24'46 14,037.28
M 25'46	2,160.84	4,000.00-				M 24'46 1,032.54
M 25'46	1,999.20-	1,111.82-	636.80-	M 25'46	13,818.15	13,802.80 M 25'46
M 26'46	361.84	1,496.00-	1,125.00-	M 26'46	5,307.70	M 25'46 13,888.96
M 26'46				M 26'46	476.56	470.30 M 26'46
M 26'46				M 26'46	4,756.81	4,703.80 M 26'46 35,335.80
M 29'46	1,120.47	1,810.80-	1,470.72-	M 29'46	1,275.27	
M 29'46	1,800.00-	674.11-	1,345.11-	M 29'46		
M 29'46	1,234.00-	429.00-				
M 29'46						M 29'46 1,434.78
M 30'46	276.14	1,000.00-				M 30'46 1,158.36
M 31	318.48-	16.56-	10.00-	M 31		
M 31	14.91-	9.42-	279.00-	M 31		
M 31	1,212.04-	1,500.00-	1,250.00-	M 31		
M 31	1,165.13-	1,100.00-	1,749.20-	M 31		
M 31	1,083.32-					
M 31'46	2,000.00-	1,100.00-				M 31 1,684.36
M 31'46				31'46	5,737.16	
					21,044.47	13,102.11 M 31'46 142.76

BALANCE 17,402.86

PLEASE EXAMINE STATEMENT OF ACCOUNT AND VOUCHERS AT ONCE

Col. 3067

Defendants' Exhibit 38D



Defendants' Exhibit 38D

MANUFACTURERS TRUST COMPANY

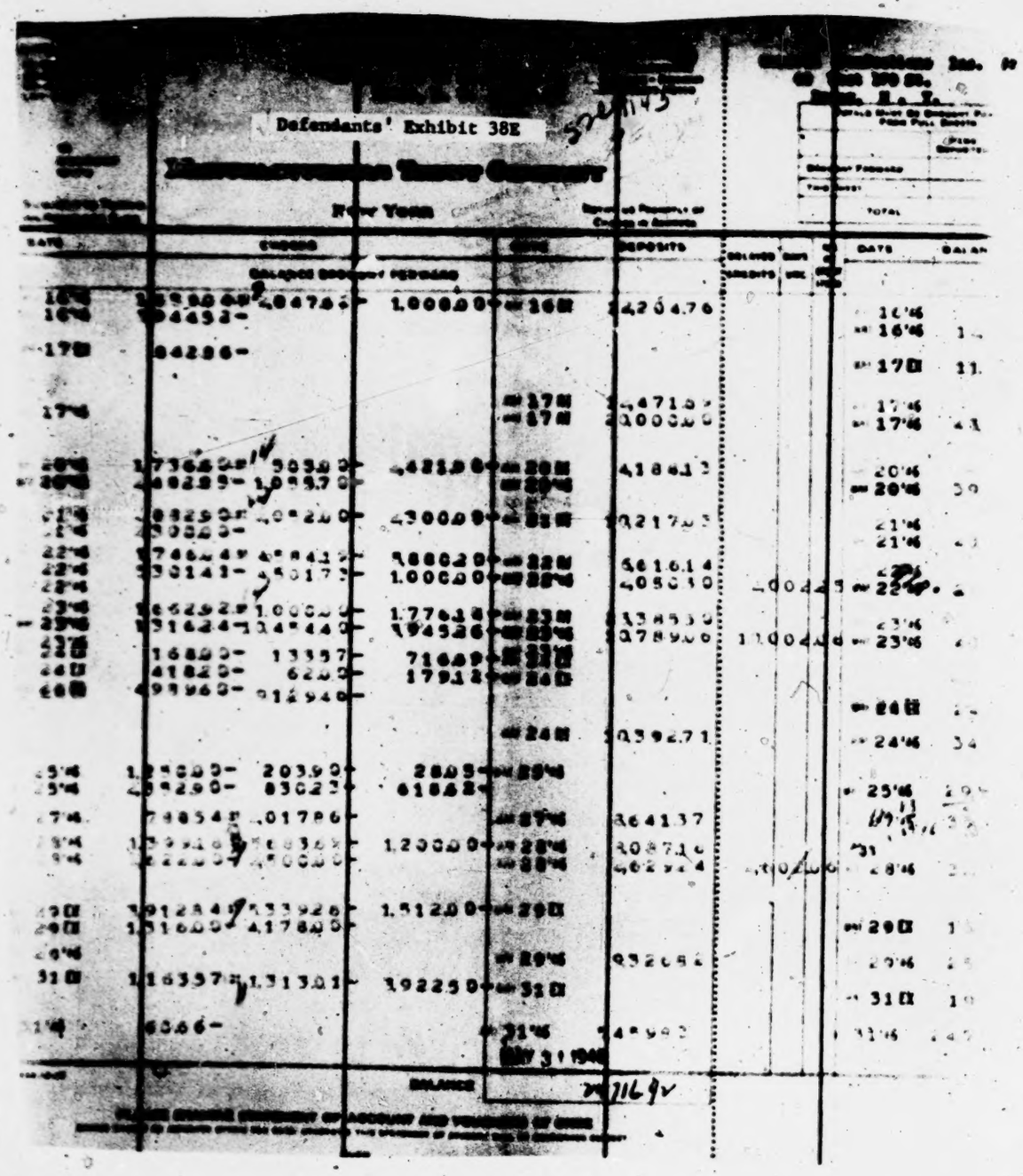
New York

DATE

BALANCE

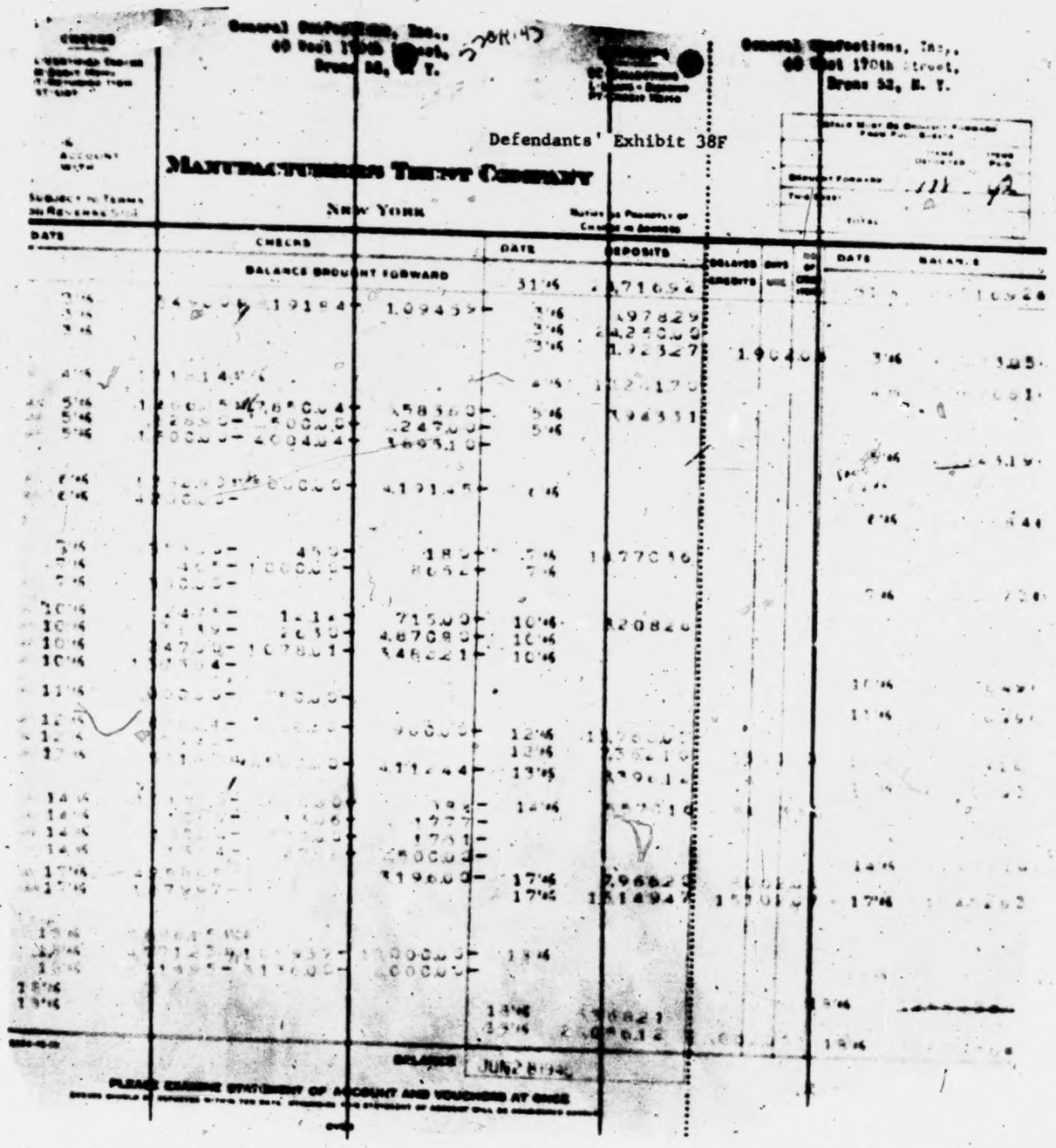
PLEASE EXAMINE STATEMENT OF ACCOUNT AND VOUCHERS AT ONCE

DEFENDANTS' EXHIBIT 38E



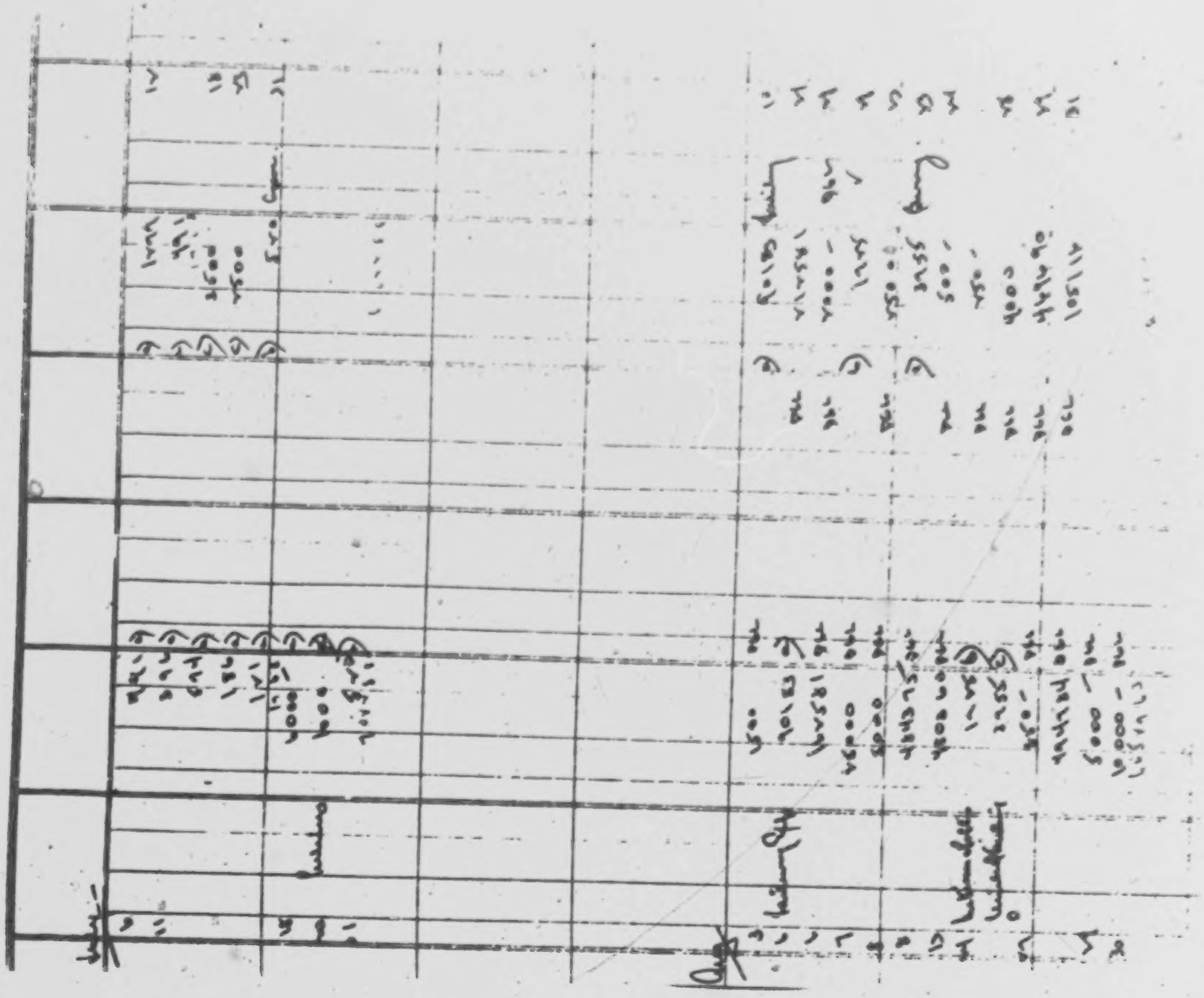
[fol. 308]

DEFENDANTS' EXHIBIT 38F



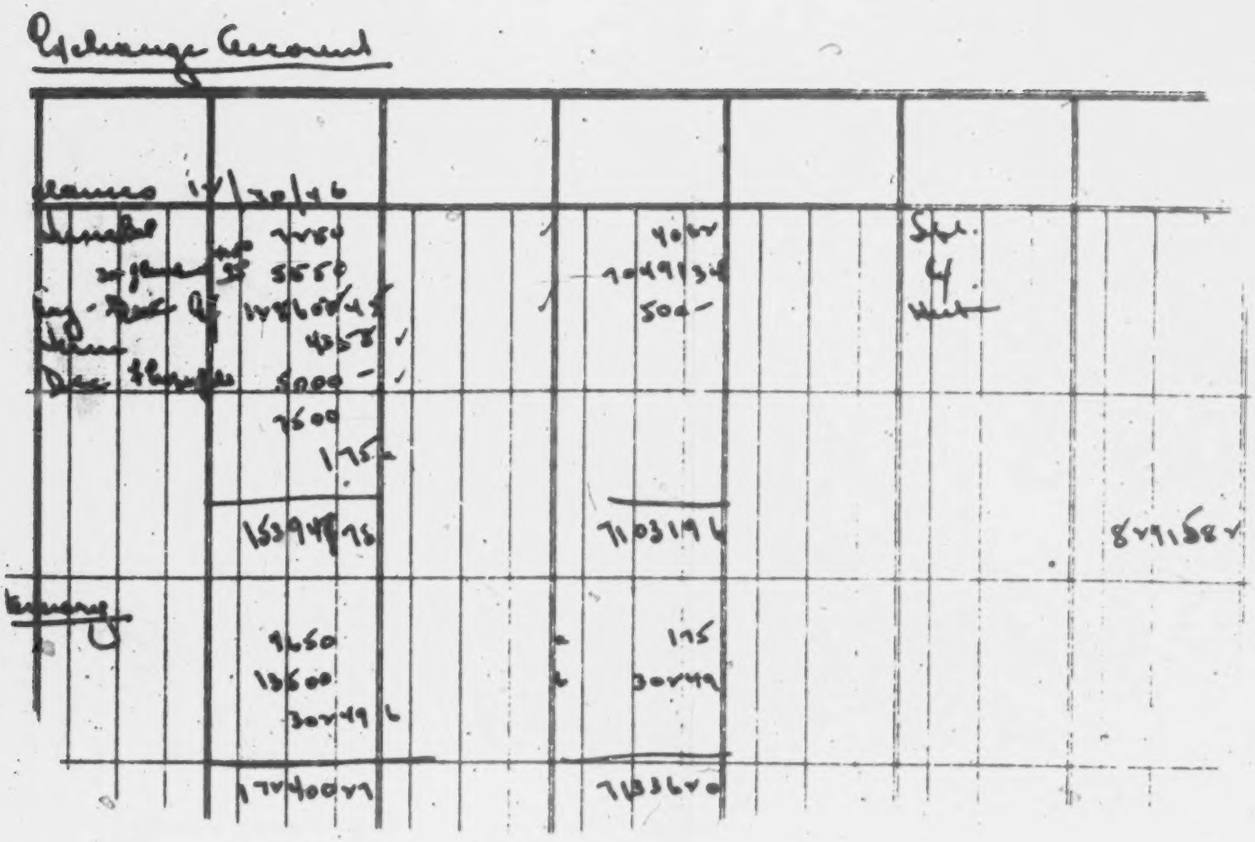
[fol. 316]

DEFENDANTS' EXHIBIT 39



[fol. 317]

DEFENDANTS' EXHIBIT 40

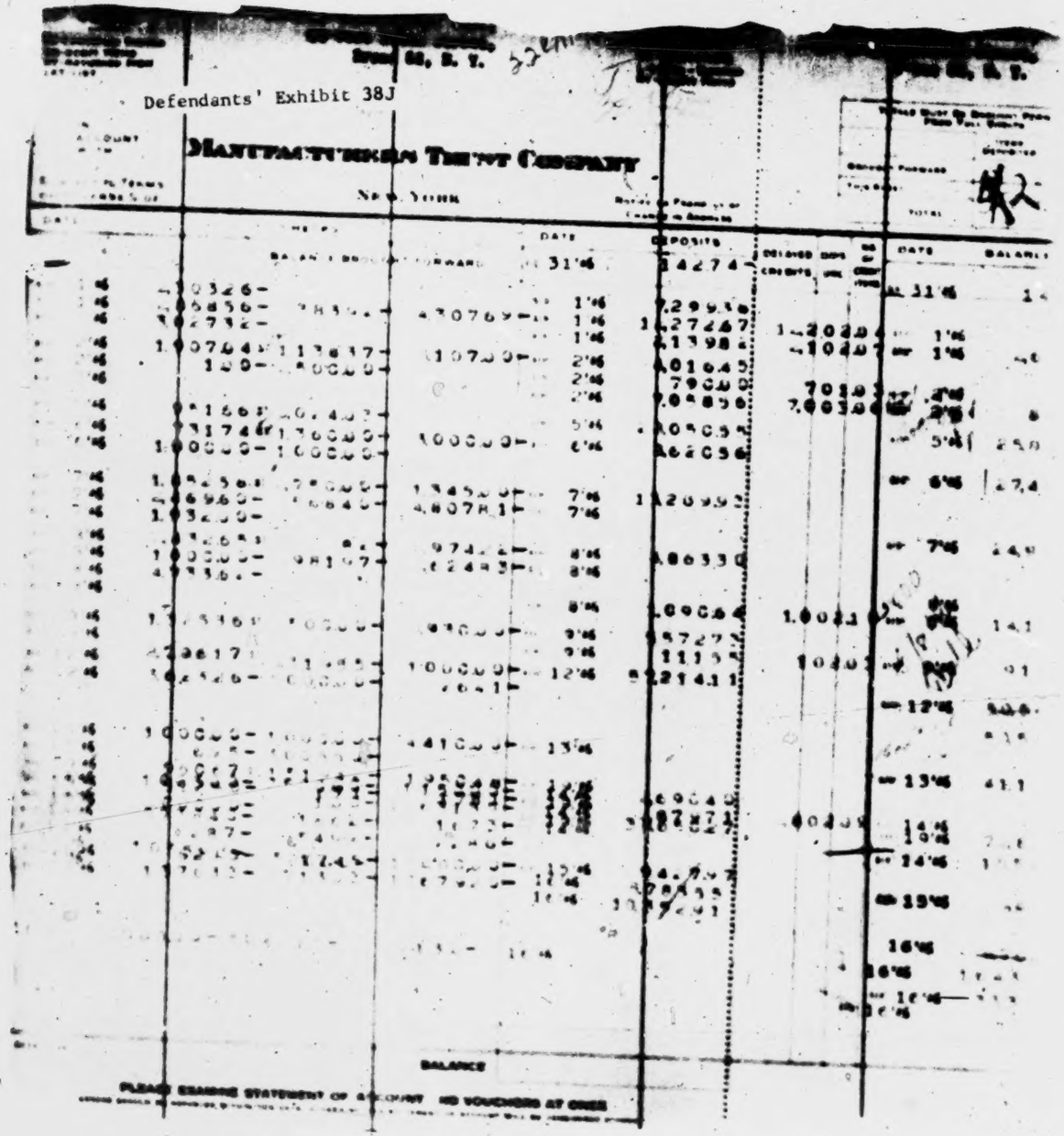


[fol. 318a]

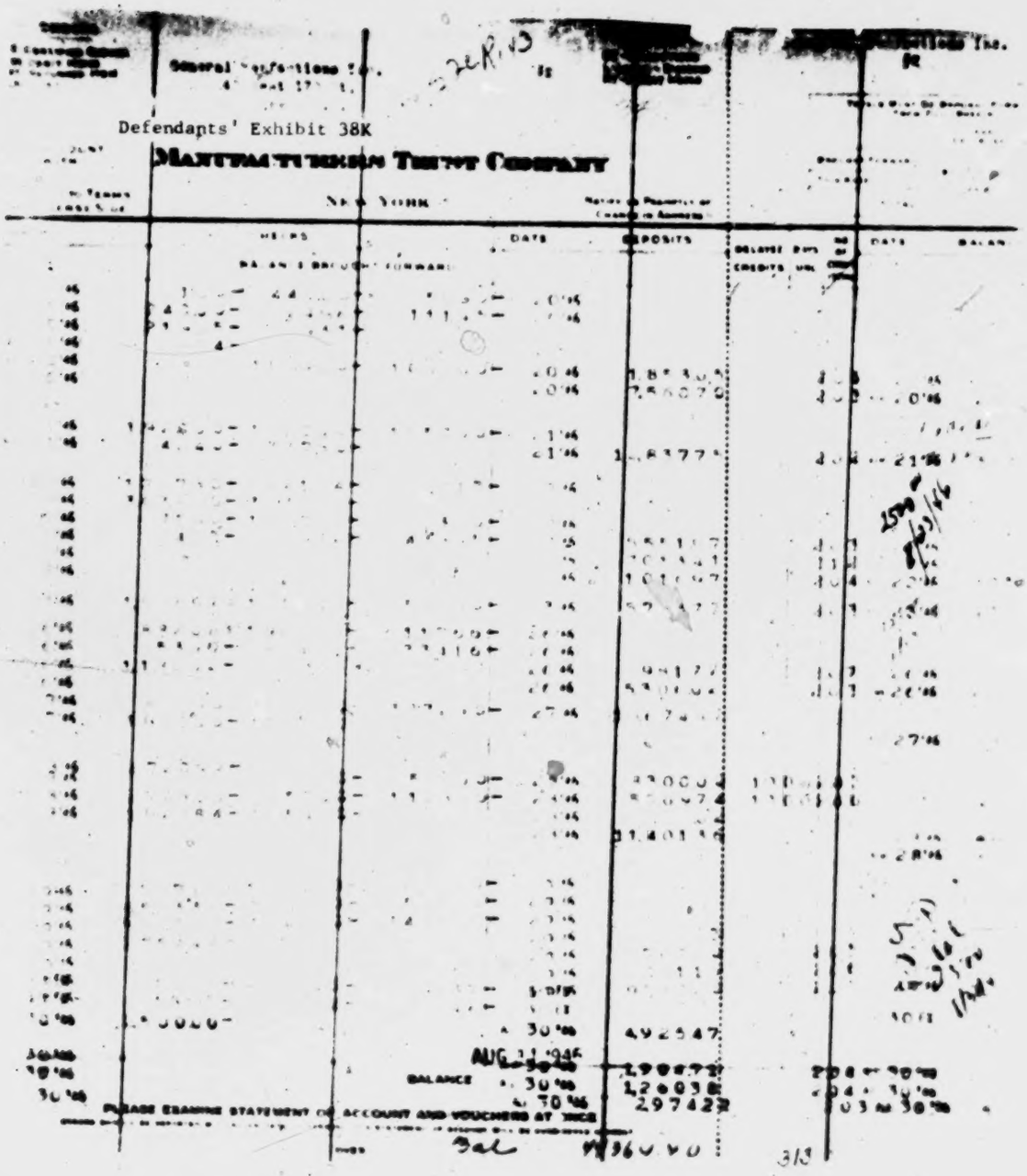
Received from Sam Krane

4/1/53

Defendants' Exhibit 38J



Defendants' Exhibit 38K



MANUFACTURERS TRUST COMPANY

NEW YORK

CHECKS | DATE | DEPOSITS | DELAYED CREDITS | DATE

BALANCE BROUGHT FORWARD

BALANCE

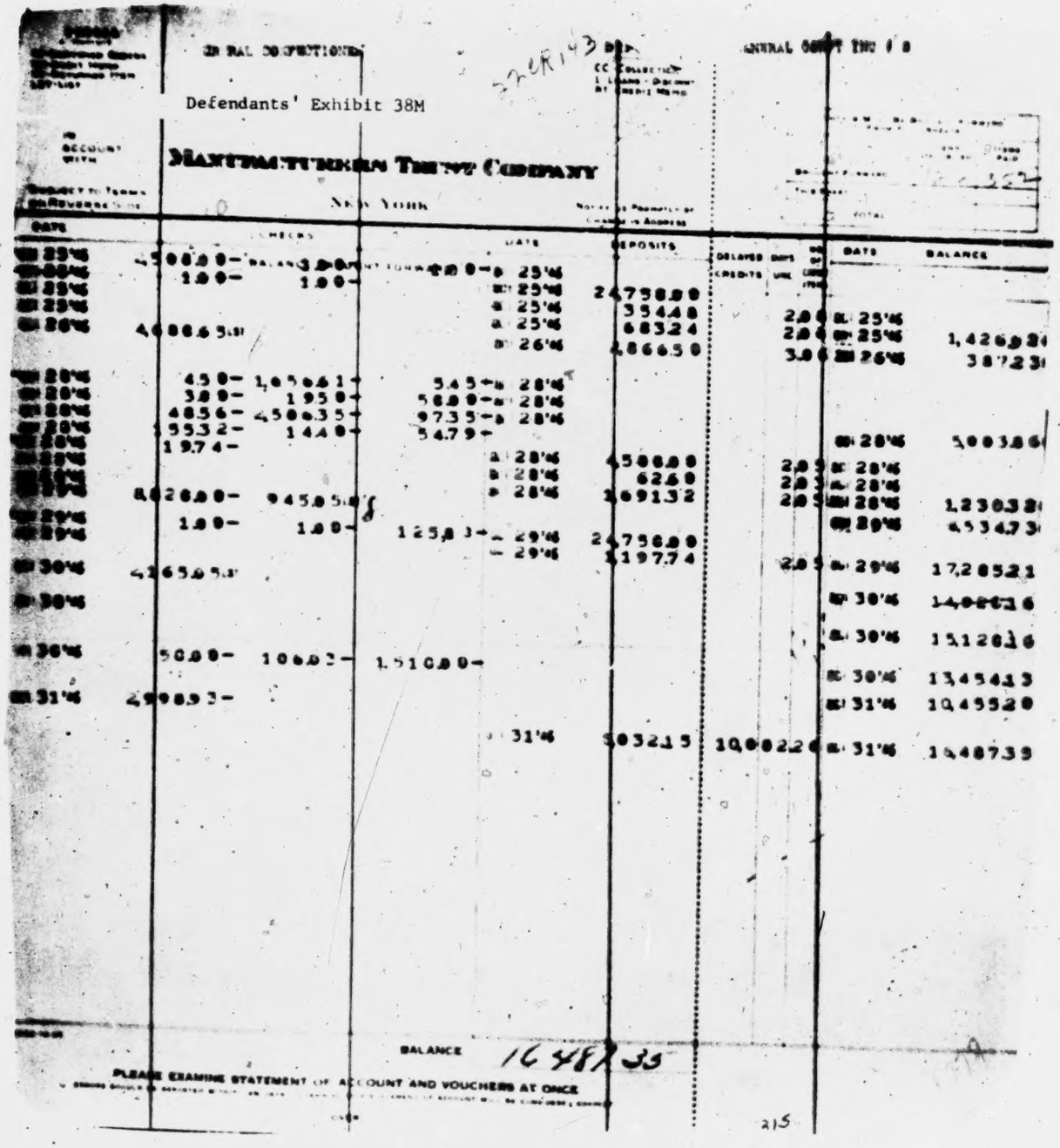
PLEASE EXAMINE STATEMENT OF ACCOUNT AND VOUCHERS AT ONCE

Fol. 314

DEFENDANTS' EXHIBIT 38L.

GENERAL CONFECTIONERS

Defendants' Exhibit 38M



MANUFACTURERS TRUST COMPANY

NEW YORK

DATE	CHECKS			DATE	DEPOSITS	DELAYED CREDITS	DAYS UNC	DATE	BALANCE
25'46	4,508.00-	BALANCE	1.00-	25'46					
25'46	1.00-	1.00-		25'46	24,758.00				
25'46				25'46	354.48		2.0	25'46	
25'46				25'46	683.24		2.0	25'46	1,426.92
26'46	4,688.65			26'46	4,866.50		3.0	26'46	387.23
28'46	4.50-	1,656.61-	5.45-	28'46					
28'46	3.00-	19.50-	58.00-	28'46					
28'46	48.56-	4,506.35-	97.35-	28'46					
28'46	155.32-	14.40-	54.79-					28'46	5,003.86
28'46	19.74-			28'46	4,508.00		2.0	28'46	
28'46				28'46	62.60		2.0	28'46	
28'46	8,828.00-	945.05		28'46	1,691.32		2.0	28'46	1,230.32
29'46	1.00-	1.00-	125.83-	29'46	24,758.00			29'46	6,534.73
29'46				29'46	1,197.74		2.0	29'46	17,285.21
30'46	4,165.05							30'46	14,020.16
30'46								30'46	15,128.16
30'46	50.00-	106.03-	1,510.00-					30'46	13,454.13
31'46	2,998.93-							31'46	10,455.20
				31'46	5,032.15	10,002.26		31'46	16,487.35

BALANCE 16,487.35

PLEASE EXAMINE STATEMENT OF ACCOUNT AND VOUCHERS AT ONCE

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Now this Indenture Witnesseth, that the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, and interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to them in hand paid by the said party of the second part at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, release, convey and confirm unto the said party of the second part, and to his heirs and assigns forever,

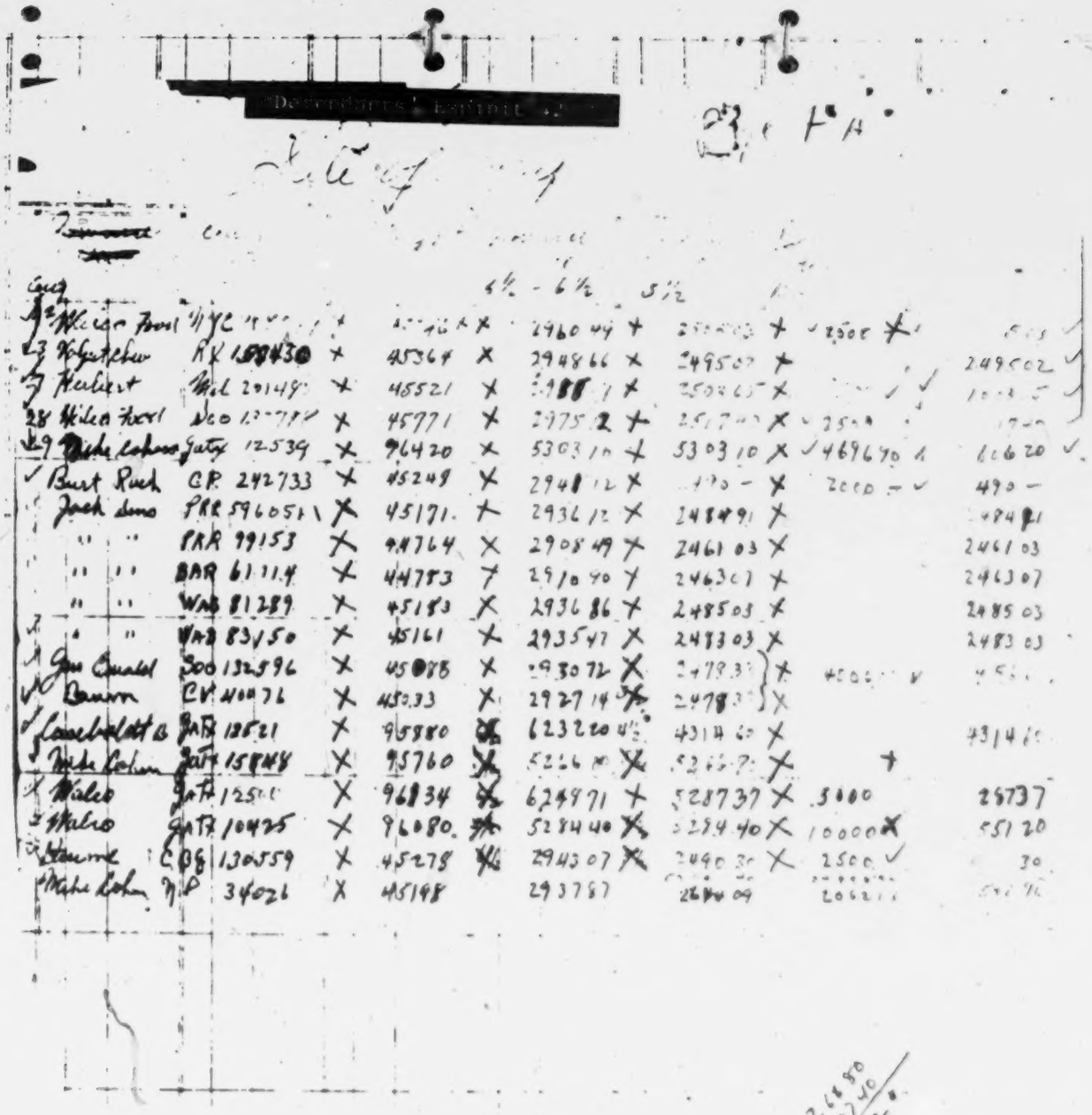
ALL those four certain tract s or parcel s of land and premises, hereinafter particularly described, situate, lying and being in the Township of in the County of and State of

THE FIRST TRACT situate, lying and being partly in the Borough of Teaneck, and partly in the Township of Ridgefield, in the County of Bergen, State of New Jersey, more particularly described as follows:

BEGINNING at the southwesterly [illegible] thereof on the west side of Passaack Brook and the corner of [illegible], running thence north sixty-nine and one-half (69 1/2) degrees west, one hundred ten links; thence north seventy-four and three fourth (74 3/4) degrees west, twenty chains and ninety links to a point in the middle of the public road; thence through the middle of said public road, north [illegible] and one half (38 1/2) degrees east, eight [illegible] and thirty-four links to the line of the land late of James I. [illegible], deceased; thence along the same south, seventy-six and one-half (76 1/2) degrees east, to the Passaack Brook, and thence along said [illegible] courses thereof, to the point or place of beginning, containing five acres, more or less.

THE SECOND TRACT:

ALL that certain tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township of Teaneck, in the County of Bergen and State of New Jersey, and being known as and designated as Lots numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40,



319a]

4/1/53
Received from Sam Krane

N. J. MORTGAGE—INT., INS. TAX, ASS'T RECEIVER & ASS'T OF RENT—(M FROM CORP. TO IND. OR CORP.

THE CHISHOLM PRINTING COMPANY, 409 PEARL ST., N. Y. 4514

BOOK 2195 PAGE 532

263831

This Indenture,

Made the 24th *day of* June *in the year of our Lord One Thousand Nine Hundred and* forty-seven.

Between GENERAL MORTGAGE CO., a corporation of the State of New York, authorized to do business in the State of New Jersey, and SADDLE RIVER PARK, INC.,

a corporation of the State of [illegible], hereinafter referred to as the *party of the first part;*

And ROBERT DAY, of 1541 West Jackson Avenue, in the City of Chicago, County of Cook and State of Illinois, hereinafter referred to as the

party of the second part.

Whereas, *the said* [illegible] *is justly indebted to the said party of the second part, in the sum of* [illegible] *Dollars, lawful money of the United States of America, secured to be paid by* its *certain bond or obligation, bearing even date with these presents, in the penal sum of* [illegible] *Dollars, lawful money as aforesaid conditioned for the payment of the said first mentioned sum of* [illegible] with interest — *Dollars, lawful money as aforesaid, to the said party of the second part,* [illegible] *or assigns on the* [illegible] *day of* [illegible] *which will be in the year One Thousand Nine Hundred and* [illegible] *and interest thereon, to be computed from* [illegible] *at and after the rate of* [illegible] *per cent. per annum and to be paid* [illegible] *administrator* [illegible] *demand, according* [illegible]

SCRIVS

49.

And it is thereby expressly agreed *that should any default be made in the payment of the said interest* [illegible] *or of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent or other municipal or governmental charge, imposition or lien theretofore or thereafter imposed or acquired upon the premises described in this mortgage, shall become due and payable, and should the said interest* [illegible] *or any part thereof, remain unpaid and in arrear for the space of* [illegible] *days, or should any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of* [illegible] *days, then and from thereforth, that is to say, after the lapse or expiration of either of the said periods as the case may be, the aforesaid principal sum of* [illegible] *Dollars, with all arrearages of interest thereon, shall, at the option of the said party of the second part,* [illegible] *become and be due and payable immediately thereafter although the period above limited for the payment thereof may not then have expired, anything therein before contained to the contrary thereof in anywise notwithstanding; and the said Mortgagee may at* [illegible] *option, pay such tax, assessment or water rent in arrear, and the amount so paid shall be added to and become part of the principal sum secured by the said bond and this mortgage, and shall be payable on demand with interest at six per centum per annum, as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear.*

[illegible]

[illegible] 2001

DEFENDANTS' EXHIBIT 49

271

the southern portion of this tract; (2) thence west one hundred and forty-five feet (1[illegible]) to the middle of the public road by the Water Company; (3) thence north along the public road two hundred and thirty-five (235) feet to the southern line of the third tract; (4) thence east one hundred and forty-five (145) feet to the south corner of the third tract to the beginning aforesaid. [illegible] being bounded on the north by the middle of [illegible] aforesaid, southerly on the west [illegible] of the Water Company public road and on the [illegible] the adjoining property of the Hackensack [illegible] intended to establish new cross [illegible] avenues when desired.

The first and [illegible] herein are subject to a mortgage held by [illegible] and [illegible] of New York upon [illegible] $13,[illegible] with [illegible]

[illegible] the [illegible]

GENERAL CONFECTIONERY CORPORATE SEAL 1946 NEW YORK

[illegible]

CORPORATE SEAL

[fol. 322]

2195 565

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, and remainder and remainders, rents, issues and profits thereof. **And Also,** all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances: **To have and to hold** the above granted and described premises, with the appurtenances, unto the said party of the second part, his heirs or assigns, to own proper use, benefit and behoof forever. **Provided always,** and these presents are upon this express condition, that if the said party of the first part, or its successors shall well and truly pay unto the said party of the second part, his heirs or assigns, the said sum of money mentioned in the condition of said bond or obligation, and the interest thereon, at the time and times, and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void.

And the said party of the first part for itself and its successors does covenant and agree to pay unto the said party of the second part, or assigns, the said sum of money and interest, as mentioned above and expressed in the conditions of the said bond.

And it is also agreed, by and between the parties to these presents, that the said party of the first part, its successors and assigns shall and will keep the [illegible] above conveyed, insured against loss or damage by fire, by insurers, and in amounts approved by the said party of the second part, or assigns and assign the policy and certificates thereof to the said party of the second part; and in default thereof, it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, payable on demand, with interest at the rate of four per cent. per annum, from the time of payment of such premium or premiums; and in default thereof, for days after demand, the principal sum hereof, with all arrearage of interest thereon, shall, at the option of the party of the second part or assigns, become and be due and payable immediately thereafter.

And the said party of the first part, the owner of the lands above described, for itself, its successor and assigns, does further covenant and agree to and with the said party of the second part, his heirs and assigns, that it will pay in full, all taxes levied, or to be levied upon the lands embraced in this mortgage, and will not claim any credit on, or make any deduction from the interest or principal hereby secured by reason of the payment of any taxes so levied, or to be levied, during the continuance of the lien of this mortgage, and upon the breach of this covenant or any part thereof, this mortgage may become and be due and payable immediately, at the option of the said party of the second part hereto. **And** the said mortgagor [illegible] covenant with the mortgagee that it is seized of an indefeasible estate in fee simple in said premises, and will warrant and forever defend the title thereof unto the mortgagee his heirs and assigns, against all lawful claims whatsoever.

And said mortgagor agrees that if default shall be made in any of aforesaid covenants or conditions, the mortgagee, his heirs and assigns, shall have the right forthwith, after any such default, to enter upon and take possession of the said mortgaged premises, and to let the said premises, and receive the rents, issues and profits thereof, and to apply the same, after payment of all necessary charges and expenses, on account of the amount hereby secured, and said rent and profits are, in the event of any such default, hereby assigned to the mortgagee, his heirs or assigns, and the mortgagee, his heirs or assigns, shall also be at liberty immediately after any such default, upon proceedings being commenced for the foreclosure of this mortgage, to apply for the appointment of a receiver of the rents and profits of the said premises, and be entitled to the appointment of such receiver as a matter of right, as security for the amounts due the mortgagee without consideration of the value of the mortgaged premises or solvency of any person or persons liable for the payment of such amounts.

All of the covenants and conditions hereinabove contained shall be for the benefit of and shall apply to and bind the said parties hereto and their respective heirs, executors, administrators, successors and assigns.

In Witness Whereof, the said party of the first part has caused these presents to be signed by its President and its corporate seal to be hereto affixed and attested by its Secretary the day and year first above written.

[illegible] Farms, Inc. [illegible]
[illegible] its corporate seal [illegible]
[illegible] Secretary the [illegible]

ATTEST:

William H. Heitmann (Sd) [illegible] President

William H. Heitmann, Secretary.

[illegible] (Sd)

[illegible] O. Davidson,
[illegible] Secretary.

2195 [illegible]

State of New Jersey
County of

Be it remem[illegible]

Sworn and subscribed before me
at
the date aforesaid

[illegible]

State of New Jersey
County of

Be it Rem[illegible]
to the year One [illegible]
[illegible]
personally app[illegible]

who being by [illegible]
of the [illegible]

that
President [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

State of New Jersey
County of Bergen } ss

I, ALEXANDER ALLAN, Clerk of the County of Bergen, in the State of New Jersey, and also Clerk of the County Courts, in and for said County (Courts of Record), do hereby certify that I have compared the copy of the Mortgage

hereto annexed, with the original record thereof in Liber 2195 of Mortgages at pages 532, &c., in my office at Hackensack in said County; and that the same is a true copy thereof, and of the whole of such original record.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Courts and County, at Hackensack aforesaid, this second day of April, A. D. one thousand nine hundred and fifty-three

Alexander Allan
Clerk.

[fol. 326]

Bergen County Clerk's Office

(REGISTRY DIVISION)

CERTIFIED COPY

APR 4 000~ 6.00 - 017275

OF A

MORTGAGE

General Confections, Inc.
and Saddle River Farms, Inc.

to

Byron Cain

Dated June 13 19 47

Recorded June 14, 1947

Book 2195 Page 532

~~55446~~

BOOK 364 PAGE 257

Know all Men by these Presents,

That I, Byron Cain

of the City of Chicago in the County of Cook and State of Illinois, party of the First Part, in consideration of the sum of One Dollar and other good and valuable consideration- - - -

[fol. 328]

[illegible] 258

[illegible] } ss.:

ROOM 356 PAGE 445

Be it Remembered That on this 11 day of February, in the year One Thousand Nine Hundred and [illegible] nine before me,

Samuel J. Davidson, [illegible]

personally appeared [illegible]

who, I am satisfied, is the assignor in the within Deed of Assignment named; and I having first made known to him the contents thereof, said acknowledge that signed, sealed and delivered the same as voluntary act and deed, for the uses and purposes therein expressed.

I HEREBY CERTIFY THIS TO BE A TRUE COPY OF THE INSTRUMENT AS PRESENTED FOR RECORDING.

Alexander Allan

COUNTY CLERK, BERGEN COUNTY, N. J.

Assignment of Mortgage

APR 28 MTGASGT 425-020016

RECORDING FEE $ —

PAID

Dated, 11 1949

Received in the Office of the County of N. J., on the day of A. D. 19 at o'clock in the noon, and Recorded in Book of Assignments of Mortgages for said County, on page

RECEIVED BERGEN COUNTY

APR 28 11 00 AM '49

ALEXANDER ALLAN COUNTY CLERK

RECEIVED BERGEN COUNTY

OCT 30 11 28 AM '48

ALEXANDER ALLAN COUNTY CLERK

State of New Jersey
County of Bergen } ss

I, ALEXANDER ALLAN, Clerk of the County of Bergen, in the State of New Jersey, and also Clerk of the County Courts, in and for said County (Courts of Record), do hereby certify that I have compared the copy of the Assignment of Mortgage

hereto annexed, with the original record thereof in Liber 364 of Assignments at pages 257, &c., in my office at Hackensack in said County; and that the same is a true copy thereof, and of the whole of such original record.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Courts and County, at Hackensack aforesaid, this second day of April, A. D. one thousand nine hundred and fifty-three.

Alexander Allan
Clerk.

[fol. 330]

Bergen County Clerk's Office

(REGISTRY DIVISION)

CERTIFIED COPY

APR 4 000~ 450- 017276

OF AN

ASSIGNMENT OF MORTGAGE

Byron Cain

to

Janet Moran

Dated February 11 1949

Recorded April 28, 1949

Book 364 Page 257

64945

[fol. 331] DEFENDANTS' EXHIBIT 51 282

THIS INDENTURE made this 9th day of August, [redacted] by and between WILLIAM S. STUHR, (with offices at 68 Hudson Street, Hoboken, New Jersey), Receiver appointed by the Chancellor of the State of New Jersey of GENERAL CONFECTIONS, INC., a corporation of the State of New York authorized to do business in the State of New Jersey, party of the first part, hereinafter designated as "SELLER," and EDWIN DANE of the Borough of Woodcliff Lake in the County of Bergen and State of New Jersey, hereinafter designated as "PURCHASER," WITNESSETH:

THAT WHEREAS in a proceeding pending in the Court of Chancery of the State of New Jersey, entitled "Between HARRY M. SIMON, INC., a corporation, Complainant, and GENERAL CONFECTIONS, INC., Defendant," (Docket No. 158/522) an Order was entered by the Chancellor of the State of New Jersey on March 8, 1948, appointing the "SELLER" Receiver of the defendant corporation, General Confections, Inc.;

AND WHEREAS the said "SELLER" did duly qualify with the Order of his appointment and is now acting as the duly qualified Receiver of General Confections, Inc.;

AND WHEREAS, by a certain other Order of the Chancellor of the State of New Jersey made and entered on the 6th day of July, 1948, a copy of which Order is annexed hereto and made a part hereof, it was ordered that the "SELLER" as Receiver of General Confections, Inc. convey to the PURCHASER all his right, title and interest in and to lands, premises and other personal or mixed property of which he as Receiver is seized;

FILED

NOW, THEREFORE, in consideration of the premises and in obedience to the last-mentioned Order, and for the purpose of giving effect to the same, and in consideration of the sum of Ten Thousand ($10,000) Dollars, in hand, paid by the said "PURCHASER," the receipt whereof is hereby acknowledged, the said "SELLER" has granted, bargained and sold, and by these presents does grant, bargain, sell and convey unto the "PURCHASER" Edwin Dane, his heirs and ass gns forever, all his right, title and interest in and to those certain lots, parcels or pieces of land situated, lying and being in the Boroughs of Hillsdale and Woodcliff Lake in the County of Bergen and State of New Jersey, and more particularly described as follows:

ALL that certain tract or parcel of land and premises hereinafter particularly described, situate, lying and being in the Township (now known as Borough) of Hillsdale, in the County of Bergen and State of New Jersey: Beginning the first tract of the northeasterly corner thereof and the northwesterly corner of land formerly owned by James Gardinier and following the line of the middle of the public road crossing the New Jersey and New York Railroad from the Hillsdale Post Road leading toward the west and formerly known as the Peter J. Wortendyke Hotel Road, said road having a southern direction westward twenty-one and one quarter (21-1/4) degrees from a direct east and west line. From the aforesaid northeast corner of said tract (1) thence west one hundred and forty-five (145) feet to the middle of the established public road leading south from

[fol. 332]

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the Wortendyke Road and known as the Water Company road; (2) thence south along the Water Company Road from the northeast corner of said tract a distance of two hundred and forty-five (245) feet; (3) thence east one hundred and forty-five (145) feet to the east line of said tract; (4) thence north two hundred and forty-five (245) feet to the place of beginning aforesaid.

The second tract beginning at the southeast corner of the first tract above described leading south (1) thence south two hundred and thirty-five (235) feet to the middle of a new street or avenue located along the southern portion of this tract; (2) thence west one hundred and forty-five (145) feet to the middle of the public road by the Water Company; (3) thence north along the public road two hundred and thirty-five (235) feet to the southern line of the first tract; (4) thence east one hundred and forty-five (145) feet to the south corner of the first tract to the beginning aforesaid. The same being bounded on the north by the middle of the Wortendyke Road aforesaid, southerly on the west side of the middle of the Water Company public road and on the east side by the adjoining property of the Hackensack Water Company; it also being intended to establish new cross streets or avenues when desired.

From the foregoing description there is excepted any portion of the said premises which constitute a part of the road described in prior deeds as the Water Company road, and as to that portion of the aforedescribed premises no representation is made without a further abstract of this portion. The exact portion of the premises covered by this certificate are described as follows:-

ALL that certain lot, tract, or parcel of land and premises, hereinafter particularly described, situate, lying and being in the borough of Hillsdale in the County of Bergen and State of New Jersey, which on the Tax Assessment Map of the Borough of Hillsdale is shown and designated as lot numbered 15 in Block 10 comprising about 0.833 acres. The said lot on the said map is more particularly described as follows:

BEGINNING at a point on the south side of Coles Crossing Road 36 feet easterly measured along the south side of Coles Crossing Road from the east side of the water Company street and running from thence (1), easterly along the south side of Coles Crossing Road about 84 feet to the northwesterly corner of lands formerly owned by James Gardinier; thence, (2) southerly and along the line of lands formerly of Gardinier 382 feet thence (3), westerly and at right angles or nearly so a distance of 97 feet thence (4), northerly about 423 feet to the point or place of beginning.

Being the same premises which were conveyed by Sylvia Gleason by deed dated December 14, 1946, recorded in the Bergen County Clerk's Office on December 19, 1946, in Book 2714 of Deeds of Bergen County at Page 373 and being the same premises which were subsequently conveyed by Saddle River Farms, Inc., a New Jersey corporation to General Confections, Inc., a New York corporation, by deed dated February 27, 1947 and recorded in the Bergen County Clerk's Office on May 12, 1947, in Book 2752 of Deeds of Bergen County at Page 160.

Third Tract:

ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Boroughs of Woodcliff Lake and Hillsdale, in the County of Bergen, and State of New Jersey.

BEGINNING at a point in the south line of lands of H. C. Craemer, distant two hundred eighty-one and sixteen hundredths feet (281.16) easterly from the intersection of the same with the center line of Pascack Road, and running thence (1) along the south line of lands of H. C. Craemer and the south line of lands of John Lynch, south seventy-two degrees and fifty-one minutes East (S 72° 51' E) seven hundred sixty-six and nineteen hundredths feet (766.19') to a concrete monument; thence (2) along the south line of lands of the Hackensack Water Company, South seventy-two degrees fifty minutes and thirty seconds east (S 72° 50' 30" E) seven hundred and thirty-two feet (732') more or less to the west bank of the Pascack Brook; and then beginning again at the Beginning Point and running thence (3) south twenty-two degrees forty-five minutes and twenty seconds West (S 22° 45' 20" W) one hundred seventy-six and seventeen hundredths feet (176.17'); thence (4) south sixty-seven degrees and twenty-nine minutes East (S 67° 29' E) two hundred sixty-five and nine tenths feet (265.9'); thence (5) south twenty-two degrees and thirty-one minutes West (S 22° 31' W) three hundred and fifty-two and twenty-two hundredths (352.22') to a point in the north line of lands of Clara Schneider, thence (6) along the north line of lands of Clara Schneider South seventy-one degrees thirteen minutes and ten seconds East (S 71° 13' 10" E) seven hundred seventy-two and sixty-seven hundredths feet (772.67'); thence (7) south sixty-six degrees seven minutes and fifty seconds East (S 66° 07' 50" E) five hundred and twenty-seven feet (527') more or less to the west bank of the Pascack Brook; thence (8) northerly and upstream along the west bank of the Pascack Brook; the several courses thereof, to the ending of the second course in this description; containing 19.75 acres.

[fol. 334]

Dec 27 11 [illegible]

[illegible]
COUNTY CLERK

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Together with a right to cross over the lands of Saddle River Farms, Inc., on the roads as now constituted thereon leading to Pascack Road, in the Borough of Woodcliff Lake, so that General Confections, Inc., its servants, agents or employees, may have means of ingress to or egress from the premises hereinabove set forth to said Pascack Road.

Together with the appurtenances, and buildings now in or on the said premises and used or necessary to be used in connection therewith, and together with his right, title and interest in and to the personal property set forth in the inventory and report of appraisers filed in the aforesaid cause.

Together with, all and singular, the hereditaments and appurtenances thereunto belonging, or in anywise pertaining, and all reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever, either in law or in equity, of the "SELLER" as such Receiver aforesaid, or of the said General Confections, Inc., of in and to the above described premises, and together with his right, title and interest in and to the personal property set forth in the inventory and report of appraisal aigned in the aforesaid cause; TO HAVE AND TO HOLD the same unto the "PURCHASER", Edwin Dane, his heirs and assigns, to the "PURCHASER" and their only proper use and benefit forever.

IN WITNESS WHEREOF, the "SELLER" as such Receiver aforesaid, has hereunto set his hand and seal the day and year first above written.

Signed, sealed and delivered : William J. Hatch (L.S.)
in the presence of :

Catherine M. Raffo
Catherine M. Raffo

[fol. 336]

BOOK 2925 PAGE 443

STATE OF NEW JERSEY)
: SS.:
COUNTY OF HUDSON)

BE IT REMEMBERED, that on this 2nd day of August in the year of our Lord, One Thousand Nine Hundred and Forty-eight, before me, a Notary Public of New Jersey, personally appeared WILLIAM S. STUHR, the Receiver of GENERAL CONFECTIONS, INC., a corporation, who, I am satisfied, is the person mentioned in the within Indenture as Receiver of GENERAL CONFECTIONS, INC., a corporation of the State of New York authorized to do business in the State of New Jersey, and who I know was appointed such Receiver by the Chancellor of the State of New Jersey on the 8th day of March, 1943, and to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed as Receiver of GENERAL CONFECTIONS, INC for the uses and purposes therein expressed.

NOTARY PUBLIC

Catherine A. Rafferty

A Notary Public of the State of New Jersey.

BOOK 2925 PAGE 444

IN CHANCERY OF NEW JERSEY
158/522

Between :

HARRY M. SIMON, INC., a corporation, : On Bill, etc.

Complainant, :

and : ORDER DIRECTING RECEIVER TO ACCEPT BID OF EDWIN DANE.

GENERAL CONFECTIONS, INC., a corporation, :

Defendant. :

. . . . . .

This matter being opened to the Court by Adolph Schlesinger, and Samuel M. Hollander, co-solicitors of William S. Stuhr, receiver of the defendant General Confections, Inc., a corporation, in the presence of Dominick Hart, solicitor appearing for the Unemployment Compensation Commission of the State of New Jersey, Louis C. Selenfriend, solicitor appearing for creditors of defendant corporation, John J. Clancy, solicitor appearing for Janet Moran, mortgagee, Samuel J. Davidson, solicitor for the defendant, and William S. Stuhr, receiver of the defendant, General Confections, Inc., a corporation, and it appearing to the Court that the receiver has heretofore filed a verified petition praying instructions in connection with an offer received by him for his right, title and interest in the assets of the defendant and memoranda being presented to the Court on behalf of the receiver and on behalf of Janet Moran chattel and real property mortgagee, and the matter being argued at length before the Court and the receiver having informed the Court that Edwin Dane has increased his offer to $10,000.00 and sufficient reason appearing therefor, it is on this 6th day of July, 1948, Ordered that the receiver be and he is hereby authorized and directed to sell his right, title and interest of the defendant General Confections, Inc., in the personalty and realty of the said defendant General Confections, Inc. to Edwin Dane for the sum of $10,000.00, and it is further ordered that the said receiver, upon receipt by him of said sum of $10,000.00 from the said Edwin Dane, be and he hereby is authorized, empowered and directed by this court to complete said sale and to execute any and all instruments, documents and papers necessary to effectuate and consummate the said sale upon the payment to the receiver in cash of the amount of said offer.

A. DAYTON OLIPHANT

C.

Respectfully advised,

CHARLES M. EGAN

V. C.

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I HEREBY CERTIFY THIS TO BE A TRUE COPY OF THE INSTRUMENT AS PRESENTED FOR RECORDING.
COUNTY CLERK, BERGEN COUNTY, N. J.

[fol. 338]

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State of New Jersey
County of Bergen } ss

I, ALEXANDER ALLAN, Clerk of the County of Bergen, in the State of New Jersey, and also Clerk of the County Courts, in and for said County (Courts of Record), do hereby certify that I have compared the copy of the Deed

hereto annexed, with the original record thereof in Liber 2925 of Deeds at pages 437, &c., in my office at Hackensack in said County; and that the same is a true copy thereof, and of the whole of such original record.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Courts and County, at Hackensack aforesaid, this second day of April, A. D. one thousand nine hundred and fifty-three.

Alexander Allan
Clerk.

[fol. 340]

Bergen County Clerk's Office

(REGISTRY DIVISION)

CERTIFIED COPY

APR 4 1000 700 - 017281

OF A

DEED

William S. Stuhr, Receiver

to

Edwin Dane

Dated August 9 1948

Recorded December 22, 1948

Book 2925 Page 437

Bk 3248 PAGE 382

This Deed,

FILED
FEB 19 1954
AT 9 O'CLOCK
ROY H. JOHNSON
CLERK
BERGEN COUNTY

Made the 9th day of March, one thousand nine hundred and forty-nine.

Between

EDWIN DANE, single, of the Borough of Hillsdale, County of Bergen and State of New Jersey, hereinafter known as the Grantor; and

NEBBUL, INC., a corporation of the State of New Jersey, hereinafter known as the Grantee.

Witnesseth That in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration,

the said EDWIN DANE

$1.00
REVENUE STAMPS

do es grant and convey unto the said NEBBUL, INC., a corporation of the State of New Jersey,

and its succes-sors and assigns forever, ALL that certain tract or parcel of land and premises, situate, lying and being in the Boroughs of Woodcliff Lake and Hillsdale, in the County of Bergen and State of New Jersey.

BEGINNING at a point in the south line of lands of H. C. Craemer, distant 281.16 feet easterly from the intersection of the same with the center line of Pascack Road, and running thence (1) along the south line of lands of H. C. Craemer and the south line of lands of John Lynch, south 72 degrees and 51 minutes east 766.19 feet to a concrete monument; thence (2) along the south line of lands of the Hackensack Water Company, south 72 degrees 50 minutes 30 seconds east 732 feet, more or less, to the west bank of the Pascack Brook; then beginning again at the beginning point and running thence (3) south 22 degrees 45 minutes 20 seconds west 176.17 feet; thence (4) south 67 degrees 29 minutes east 265.9 feet; thence (5) south 22 degrees 31 minutes west 352.22 feet to a point in the north line of lands of Clara Schneider; thence (6) along the north line of lands of Clara Schneider, south 71 degrees 13 minutes 10 seconds east 772.67 feet; thence (7) south 66 degrees 7 minutes 50 seconds east 527 feet, more or less, to the west bank of the Pascack Brook; thence (8) northerly and upstream along the west bank of the Pascack Brook, the several courses thereof, to the ending of the second course in this description. Containing 19.75 acres.

TOGETHER with a right to cross over the lands of Saddle River Farms, Inc. on the roads as now constituted thereon leading to Pascack Road in the Borough of Woodcliff Lake so that the grantee, its servants, agents or employees may have means of ingress to or egress from the premises hereinabove set forth to the said Pascack Road, all as set forth in deed given by Saddle River Farms, Inc. to General Confections, Inc. dated February 27, 1947, recorded May 12, 1947 in Book 2752 of Deeds, at page 157, in the Bergen County Clerk's Office

BEING the same premises conveyed to the grantor herein by William S. Stuhr, receiver of General Confections, Inc. dated August 9, 1948, recorded December 22, 1948 in the Bergen County Clerk's Office, in Book 2925 of Deeds, at page 437.

SUBJECT to mortgages, restrictions, easements, zoning ordinances, municipal regulations, and other encumbrances of record.

To have and to hold said premises with the appurtenances unto the said grantee
heirs and assigns forever

The said

Covenant :

1 That [illegible] of the said [illegible]

2. That [illegible] as the right to convey the said land to the grantee.

3 That the grantee [illegible] shall have quiet possession of the said land free from incumbrances.

4 That the grantor will [illegible] such further assurances of the said land as may be

5. That [illegible] will warrant [illegible] the property hereby conveyed.

In Witness Whereof, [illegible] ha

Signed, [illegible]

BOOK 3248 PAGE 364

State of New Jersey.
County of BERGEN } ss.:

Be it Remembered, That on this 9th day of March, in the year One Thousand Nine Hundred and Forty-nine, before me, the subscriber,

An Attorney at Law of New Jersey,

personally appeared EDWIN DANE

who, I am satisfied, is the grantor named in the within Instrument, and to whom I first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

~~STATE OF NEW JERSEY)~~
~~ss.~~
COUNTY OF ~~BERGEN~~)

VINCENT F. X. CARLSEN
Attorney at Law of New Jersey

BE IT REMEMBERED. ~~That on this 9th day of March, 1949, before me, the subscriber, An A ttorney at Law of New Jersey, personally appeared~~ -

I HEREBY CERTIFY THIS TO BE A TRUE COPY OF THE INSTRUMENT AS PRESENTED FOR RECORDING.

Alexander Allan
COUNTY CLERK. BERGEN COUNTY. N. J.

SEP 24 0110 515- C61799

Deed.

EDWIN DANE

RECORDING FEE $ 5 15
PAID 2

NEBBUL, INC., a New Jersey corporation.

Dated, March 9th, 1951.

Received in the Office of the County of on the day of A.D., 19 , at o'clock, in the M. and Recorded in Book of DEEDS for said County, on page

LAW OFFICE
MAJOR & CARLSEN
241 MAIN STREET
HACKENSACK, N. J.

343

State of New Jersey
County of Bergen } ss

I, ALEXANDER ALLAN, Clerk of the County of Bergen, in the State of New Jersey, and also Clerk of the County Courts, in and for said County (Courts of Record), do hereby certify that I have compared the copy of the Deed hereto annexed, with the original record thereof in Liber 3248 of Deeds at pages 362, &c., in my office at Hackensack in said County; and that the same is a true copy thereof, and of the whole of such original record.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Courts and County, at Hackensack aforesaid, this second day of April, A. D. one thousand nine hundred and fifty-three.

Clerk.

Bergen County Clerk's Office

(REGISTRY DIVISION)

CERTIFIED COPY

APR 4. 000~ 5.00 - 017282

OF A

DEED

Edwin Dane

to

Nebbul, Inc.

Dated March 9 1949

Recorded September 24, 1951

Book 3248 Page 362

[fol. 346]

DEFENDANTS' EXHIBIT 53

ABC:sl (EJC,Jr.)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
52 CR 143.

THE UNITED STATES OF AMERICA, Plaintiff,

—vs.—

THE SHOTWELL MANUFACTURING COMPANY, ET AL., Defendants.

AFFIDAVIT

STATE OF ILLINOIS,
COUNTY OF COOK, ss.:

ARTHUR B. CUNNINGHAM, being first duly sworn, says that he is a Special Assistant to the Attorney General at Washington, D. C., and as such Special Assistant, and as a part of his official duties, he has been assigned the trial of the above named case.

That the defendant, The Shotwell Manufacturing Company, was during the calendar years 1945 and 1946 engaged in the manufacture and sale of candy, and in 1946 engaged in the sale of corn syrup.

That during the calendar years 1945 and 1946 David G. Lubben was a principal of the Eatsum Foods Product Company, a sole proprietorship and a partnership, and also was a principal of General Confections, Inc. and Reserve Trading Company, and as such principal purchased large quantities of candy and certain amounts of corn syrup from the defendant corporation.

That in order to effect the aforementioned purchases the said David G. Lubben, as such principal, in accordance

with an oral agreement entered into by him with the de-
[fol. 347] fendants, was required and did pay to the defendants large sums of money in excess of the invoice price of these purchases.

It is further averred that David G. Lubben, as such principal, in accordance with an oral agreement entered into by him with the defendants, made purchases of candy for which purchases he received no invoices from the defendant corporation and that for said purchases he was required to and did make currency payments to the defendants based on regular invoice amounts plus over-invoice premium amounts.

It is further averred that substantially all of the over-invoice premium payments together with payments for uninvoiced purchases were personally made by David G. Lubben to the defendants in currency and such payments were made by him at the request of the defendants in a manner so as to conceal the true nature of these transactions; that in 1945 all of the over-invoice premium currency payments, totalling approximately $177,000.00, were paid to the defendants personally by David G. Lubben; that in 1946 the over-invoice currency premium payments and the currency payments on uninvoiced purchases totalled approximately $300,000.00 and of this sum David G. Lubben personally paid to the defendants approximately 83 per cent thereof.

The affiant further says that during the calendar years 1945 and 1946 and subsequent thereto the defendants had conversations with and made statements to David G. Lubben and to no other person relative to said currency-premium payments which are material to the issues in this case.

The affiant further says that none of the over-invoice payments or the payments for the uninvoiced sales received by the defendants from David G. Lubben were recorded on the books or records of the defendant corporation nor reported in its income tax returns for the calendar years 1945 and 1946.

[fol. 348] The affiant further says that on April 8, 1953 he was telegraphically advised (Exhibit A) that said David

G. Lubben was confined to a hospital in Puerto Rico; that subsequent thereto, the affiant was advised by Dr. Eduardo Montilla, Santurce, Puerto Rico, by letter dated April 8, 1953, (Exhibit B) which letter was received by the affiant on April 13, 1953, that David G. Lubben was hospitalized at the Presbyterian Hospital, San Juan, Puerto Rico; that he was suffering from asthmatic bronchitis and pneumonitis and was running a high temperature; that David Lubben would not be physically able to travel for a period of six to eight weeks if he makes a complete recovery from his pneumonitis and asthma.

The affiant further says that on April 13, 1953 he was telephonically advised from San Juan, Puerto Rico, by Samuel Davidson, attorney for David G. Lubben, that Mr. Lubben was still hospitalized and had suffered a relapse.

The affiant further says that the testimony of David G. Lubben is vital to the plaintiff in the trial of this case.

In view of the above, the plaintiff has filed its motion for a continuance of this cause.

.....

SUBSCRIBED AND SWORN to
before me this ..... day of

....., A.D. 1953.

.....
Notary Public

[fol. 349]

COPY

WESTERN UNION

(46)

1953 Apr 8 PM 12 50

CDU 153 19 PD INTL FR RUSH— CD SAN JUAN PR
VIA ALLAMERICA 8 234P

MM RUSH—

SAM KRANE U. S. ATTORNEYS OFFICE
COURT HOUSE CHGO—

LUBBEN IN HOSPITAL DOCTOR MONTILLA AIR LETTER FOLLOWS—

EDWIN DANE BOOKMAN—

LUBBEN.

EXHIBIT "A"

[fol. 350]

COPY

DR. EDUARDO MONTILLA
CALLE KRUG 75
TERRAZA DEL PARQUE
SANTURCE, PUERTO RICO

April 8, 1953

Mr. Arthur Cunningham
Dep. Attorney General U.S.A.
U.S. District Attorney's Office
Chicago, Ill.

Dear Mr. Cunningham:

Mr. David Lubben of 50 Paseo Covadonga, San Juan, Puerto Rico, is one of my patients, and he has been requested to appear before Court on April 20, 1953.

I wish to report that Mr. Lubben has been suffering from a very severe attack of asthmatic bronchitis and pneumonitis for the past 3 days, his condition having become worse so that today I have hospitalized him at Presbyterian Hospital, San Juan, P.R. with a high temperature.

At Mr. Lubben's request, I am respectfully requesting that he be excused from appearing before Court on April 20th as he will not be physically able to travel for the next 6 to 8 weeks, if he makes a complete recovery from his pneumonitis and asthma.

If you require any additional information I will be glad to furnish it, or you may request it directly from the Medical Director, Presbyterian Hospital, San Juan, P.R., where Mr. Lubben is hospitalized at present.

Sincerely yours,

/s/ Eduardo Montilla, M.D.
EDUARDO MONTILLA, M.D.

EM:sam

EXHIBIT "B"

Form No. 686

No. 52 CR 143

UNITED STATES
IN THE DISTRICT COURT
~~OF ILLINOIS~~
FOR THE
NORTHERN DISTRICT of ILLINOIS, EASTERN DIVISION

THE UNITED STATES OF AMERICA,

Plaintiff

vs.

THE SHOTWELL MANUFACTURING COMPANY, ET AL.,

Defendants.

AFFIDAVIT

OTTO KERNER, JR.
UNITEDSTATES ATTORNEY

Filed ....., 19....

....., *Clerk.*

By ....., *Deputy.*

7—7[illegible] U. S. GOVERNMENT PRINTING OFFICE

Regular Eatsum Box

(1945) Money Paid Out

Nov	30	Kurtz for overage on 50 Bags Dextrose	525 00
"	30	Legal Fee - O.P.A.	500 00
Dec	3	Paid Bill for 500 Bag certificate	2100 00
"	3	Paid Bill for 500 Bag certificate	6984 00
"	6	Pur Ams $3039.52 plus $500 Frank owed from last week. Less $35.. due us for sugar leaves a net amount of $39.52 I paid them	395
"	6	Paid - Bill for 500 Bag certificate final balance	916 00
Dec	11	#5 Deal - Sold 170 bags $3.50 bag over or $595 Bought back 80 bags at $16.00 each so I ~~[illegible]~~ had to pay out an additional $685.00	$685 00
Dec	12	Paid out to Dayton bread Co overage on 600 bags Dextrose	5100 00
	12	Paid out to Bert Rock for purchase of 600 Dextrose resold to Mike Cohen. This is for overage only. Miss Feldman also gave check. We will receive the dextrose for record only	6450 00
Dec	12	Paid to Miss Feldman to get old dummy sugar invoice off of books	~~742~~ 742 00
Dec	12	Paid to Miss Feldman to apply on exchange account	1000 00
Dec	17	Pur Ams	1729 60
Dec	17	Paid to Miss Feldman to apply on exchange account	270 40
Dec	17	Paid to Carey Part Payment on 150 #5 - [illegible]	[illegible]
Dec	17	Paid to Goddard - Union agent Xmas present	[illegible]
Dec	17	Paid to Teddy - Union agent (Last payment)	[illegible]
"	26	Paid to Carey Part Payment on 300 - #5 - 28 (6000 Total)	4280 00
"	21	" " " Bal on 150 #5	600 00
"	21	" " " 50 #5	1200 00
"	26	" " Teddy	100 00
"	27	Miss Feldman to apply on Exchange account	1000 00
"	27	" " Bonus	250 00
"	29	Isenberg - 50 Bags #5	1200 00
"	29	Carey	820 00

Regular Catsum Box

Money Taken In

Nov	30	Taken over from Frankie	179 07
Nov	30	Sherman Price	
		1053 lbs Peanut Rounders @ .36	379 08
		1300 lbs Licorice .28	364 00
		2001 lbs Mix Choco Nuts .65	1300 65
Nov	30	1000# Jordan Almonds .52 Less 1%	514 80
Dec	3	Money received from Invoice given us by Diversified Drug for dextrose we never received	2100 00
"	3	Money received from Invoice given us by for dehydrator we never received less 3%	
		Original invoice to us was for $7200.00	6984 00
Dec	6	Mike Cohen 8000 lbs cocoa .20 lb ($1600)	1600 00
"	11	Bill Giglio - 1 bag #5	25 00
Dec	11	~~#5 Deal~~	
		~~Sold 170 bags $3.50 bag over or $595.00~~	
		~~Bought back 80 bags at 16.00 each so I had~~	
		~~to pay out an additional amount of $685.00~~	
Dec	12	Received $5100 from Miss Feldman from exchange account. Money used for dextrose	5100 00
Dec	12	Average on bags #5	17 50
Dec	12	Received from Mike Cohen as deposit on 600 Dextrose	5000 00
Dec	12	Money received from cashing John's checks	1085 90
Dec	17	Received from Miss Feldman from exchange account	2000 00
Dec	17	Gubiles average on #5	75 00
Dec	17	Mike Cohen payment on 600 Dextrose	3000 00
Dec	17	" " " " " "	1080 00
Dec	19	" " Final Payment on 600 "	1720 00
"	19	Cash - Sun Foods - 200# Almonds	103 00
"	26	" - Imperial Candy Cash on Box Choco deal	7300 00
"	26	" Gubiles - average on #5	15 00
	31	" P.B. Foods - 1000# Almonds	514 80
"	31		

fol. 355

Paid Out

Oct	29	Paid Lawy 1200 on account 200 more due	1200 —
	"	Legal Fee (Union Legal)	100 —

SJCR143

55

[fol: 360]

DEFENDANTS' EXHIBIT 60A

The SHOTWELL MFG. CO.

CONFECTIONERY SPECIALTIES
3501 POTOMAC AVENUE ... CHICAGO 51, ILLINOIS
PHONE CAPITOL 0800

April 21, 1947

Mr. David G. Lubben
40 W. 170th Street
Bronx 52, New York

Dear Mr. Lubben:

The balance of your account as of April 21, 1947 is $28,986.25. This amount is a total of the following invoices:

Invoice	Date	Balance
213223	11/6/46	$3,550.09 - balance
196046	11/16/46	6,653.18 —
196511	11/21/46	7,757.43 —
197715	11/26/46	4,489.83 —
202700	12/10/46	3,175.20 —
205145	12/17/46	3,360.52
	Total:	$28,986.25

FILED
FEB 1
ROY H. JOHNSON
Clerk

So that you may have a further check on your records, the following analyzed detail is included:

Balance December 31, 1946 . . . . . $45,112.32

Invoice	Date	Balance
213223	11/6/46	$19,676.16 —
196046	11/16/46	6,653.18 —
196511	11/21/46	7,757.43 —
197715	11/26/46	4,489.83 —
202700	12/10/46	3,175.20
205145	12/17/46	3,360.52 —
	Total:	$45,112.32

Cash Receipts	1/15/47	$5,000.00
" "	1/20/47	5,000.00
" "	2/17/47	500.00
" "	2/27/47	500.00
" "	3/6/47	500.00

Commissions' applied against account:

January commission	$1,207.77
February "	1,080.00
March "	1,251.50
Your invoice #26406	57.00
Your invoice #26613	1,050.00
Total Credit	$16,126.07
Balance April 21, 1947	$28,986.25

JE #240

45,112.32
-2287.77
42,824.55
-11000.00
31,824.55

Bal 2/28/47=31,824.55

These figures do not include any of the consigned stock, as we have your post dated checks.

If there is any further information that you wish concerning your account, please let me know, and I will be glad to furnish it.

Yours very truly,

THE SHOTWELL MFG. CO.

Gladys B. Morrill

Gladys B. Morrill
Office Manager

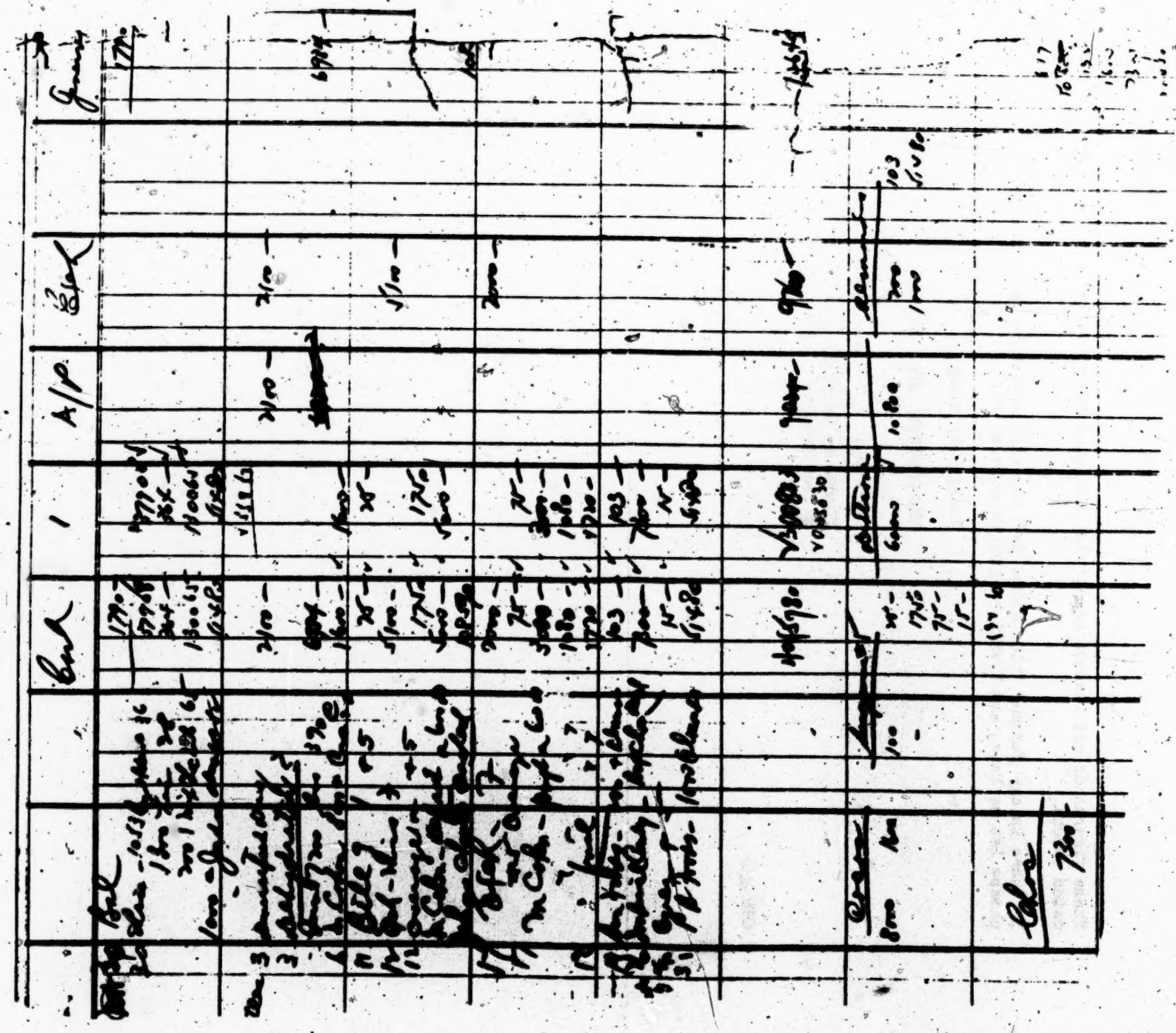
GBM:bjs

AT [illegible] CLERK

DEFENDANTS' EXHIBIT 60B

[fol. 362]

DEFENDANTS' EXHIBIT 64A.



[fol. 356]

Defendants' Exhibit 56

General Confections, Inc
Analysis of Eatsum Food Products Co
Based on Sources of Books of Original Entry
June 30, 1946

Date 1946	Ref	Debits: Check Book Check No	Debits: Check Book Amount	Debits: Journal	Debits: Purchases		
Mar 14	CD1	14	2000000			Check Made Payable To Eatsum Food Products	
15	CD1	35	500000			Do Do	
18	CD2	45	500000			Do Do	
20	CD2	56	500000			Do Do	
21	CD3	73	500000			Do Do	
25	CD3	109	500000			Do Do	
27	CD3	114	5000000			Do Do	
Apr 4	CD7	209	2500000			Do Do	
12	CD11	589	685347			Check Made Out To Cash - Endorsed by Lubben & Edward Brown	
Mar 28	CD4	149	3553600			Check Made Out To Cash - Endorsed by Lubben	
Apr 30	J3			7425		Dr. Eatsum Food Prod $74.25; Dr. Sales Disc $.75 Cr. C W Brown A/c Rec $75.00 *	
30	J3			7425		Dr. Eatsum Food Prod 74.25; Dr Sales Disc $.75; Cr Rayner Wholesale Bk Rec $75.00 *	
30	J3			6312		Dr Eatsum Food Prod $63.12; Dr Sales Disc $.16; Cr J W Rageur A/c Rec $63.28 *	
30	J3			13348		Dr. Eatsum Food Prod $133.48; Cr. T.D. Allison $133.48 *	
30	J3			20800		Dr Eatsum Food Prod $208.00 Cr. A J Hoff $208.00 *	
May 1	CD16	469	362			NY Central RR.	
9	CD17	506	2607			N.Y.N. H & Hartford RR	
9	CD 17	504	834			NYC R.R.	
Mar 31	P5				45246	Credit Memo Dated 3/31/46 40158	45246
Apr 26	P5				35608	Credit Memo Dated 4/26/46 # 40192	35608
31	J5			4800		Dr Eatsum Food Prod $48.00, Cr. Glen Gillette $48.00.	
June 1	J9			964066		** See Attached Analysis	

FILED
FEB 13 1947
AT ... O'CLOCK
ROY H. JOHNSON
CLERK

$6

[fol. 357]

DEFENDANTS' EXHIBIT 57

General Confections Inc
Analysis of Eatsum Food Products Co
Based on Sources of Books of Original Entry
June 30, 1946

Date	Ref	Debits: Cash Book Check No	Debits: Cash Book Amount	Debits: Journal	Debits: Purchase	
1946 April 31	J5			7500		Dr Eatsum Food Prod Co $7500 Cr. W. Isen Candy A/c Rev $75.00
June 30	J7			7500000		Dr Eatsum Food Prod $75000.00; Dr Finance Charges $6000.00; Cr. Loans Payable, Special $6000- For check issued by G.C.A.C. to General Confections & Endorsed by the Corp to Wm Giglio in accordance with Agreement dated 6/4/46
			16242750	8531676	808.54	

Summary Debits & Credits of
Eatsum Food Products Co (Accts Payable)

	Dr	Cr
Cash Book	16442750	-
Purchase Book	808.54	30928152
Journal	8531676	3049536
	24855280	33957688
Balance	9104408	
	33957688	33957688

52CR143
FILED
FEB. 1 ...
AT ___ O'CLO...
ROY H. JOHNSON
CLERK

57

* See attached Accts Rev

[fol. 358]

Defendants' Exhibit 58

General Confections Inc
Analysis of Fatsum Food Products Inc
Based on Sources of Books of Original Entry
June 30, 1946

Date 1946	Pay	Credits: Purchases	Credits: Journal	Date of Invoice 1946	Invoice No	Amount
Mch 14	P4	4977157		March 14	40104	4977157
14	P4	54903		March 14	40105	54903
14	P4	11097145		March 14	40106	11097145
15	P4	108605		March 15	40109	108605
15	P4	256183		March 15	40110	256183
15	P4	354136		March 15	40111	354136
15	P4	2192070		March 15	40117	2192070
15	P4	478113		March 15	40118	478113
18	P4	1458000		March 18	40119	1458000
15	P4	806400		March 15	40121	806400
9	P4	417657		March 9	40122	417657
9	P4	163800		March 9	40123	163800
9	P4	71934		March 9	40124	71934
9	P4	252132		March 9	40125	252132
9	P4	14268		March 9	40142	14268
April 1	P4	2316500		April 1	40147	2316500
March 26	P5	1365000		March 26	40148	1365000
28	P5	727454		March 28	40149	727454
28	P5	15714		March 28	40150	15714
28	P5	34825		March 28	40152	34825
April 2	P5	2014200		April 2	40153	2014200
2	P5	932659		April 2	40154	932659

S2CR143
FILED
FEB 10 1954
[illegible] JOHNSON
CLERK

DEFENDANTS' EXHIBIT 59

General Confections, Inc.
Analysis of Eatsum Food Products Inc
Based on Journal of Books of Original Entry
June 30, 1946

Date 1946	Ref	Credits: Purchases	Credits: Journal	Date of Invoice 1946	Invoice No	Amount
March 28	P5	349508		March 28	40155	349508 x Duplication
April 5	P5	21519		April 5	40156	21519 "
26	P5	5992		April 26	40193	5992 "
26	P5	48354		April 26	40194	48354 Eliminate J.E. Entry
28	P17	394754		March 28	40151	394754 "
30	P17	1170		April 30	40196	1170 "
June 1	J9	"	3029536			3029536 Entry June 1946 - Debit Plant Equipment (Leo Latine) 200000
		30928152	3029536			33957688 -

Investment (Olive Ribbon Trucking)		1750000
Life Insurance (Perkins)		73513 -
Light + Power		91471
Deposits -		
Con Edison	190000	
Interboro Elm	4500	
Lease	4400 00	414500
Misc Accts Receivable		
H C Craig	401952	
McKesson + Robbins	100	
Collins Fulling Box	100000	502052
Cr. Accts Payable Eatsum Food Prod		3029536

To Record Transfer of above items pursuant to agreement dated 6/4/46 as of 3/9/46

52 Cr 43

FILED

FEB 19 1954

AT ... O'CLOCK
ROY H. JOHNSON
CLERK

59

DEFENDANTS' EXHIBIT 64B

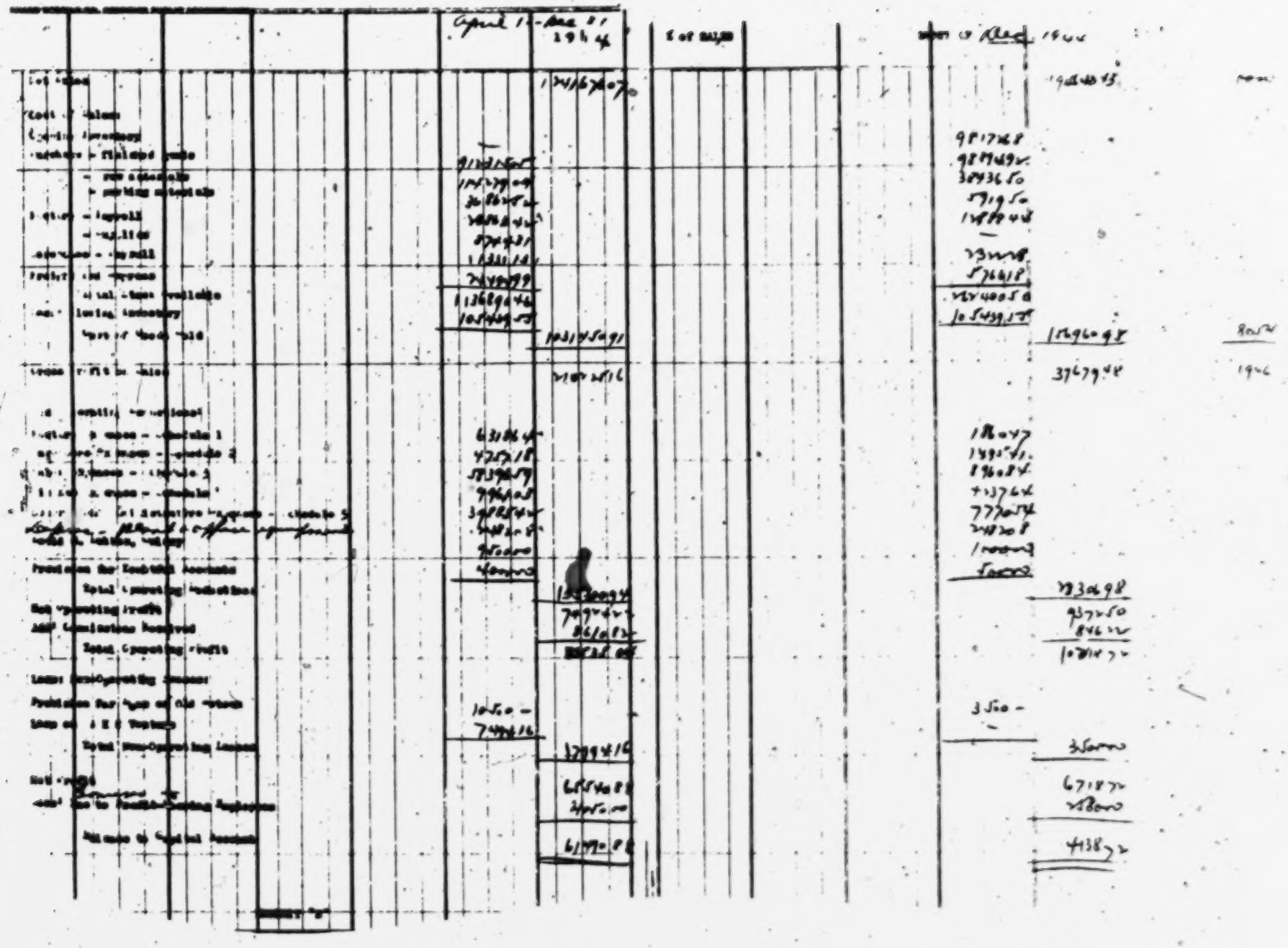
[fol. 364]

Dec 1945

		Cash	Cash	Pp	a/R	Exp	General
Nov 30	Kurtz - 500 D over		525 —	525 —			
	Legal		500 —	500 —			
Dec 3	Bill - 500 by Cert		2100	2100 —			
	"		6984 —	6984 —			
6	PA - 30395 + 500 - less 3500 $5		3952	3952 OK			
6	Bill - Balance on 500 Cert		916 —	916 —			
11	Bill 170 + 5 @ 350 on 575 —						
	Bright 80 @ 16 - 1280		685 —	685 —			
12	Dayton - Over on 600 D		5100 —	5100 —			
12	Bert Rock over on 600 D reserve to M.C		6450 —	6450 —			
	Miss F - for a/c rec		742 —		742 —		
	" Exch		1000 —			1000 —	
17	PA		172960	172960 OK			
	Miss F - Exch		27040			27040	
	Carey - 150 + 5 - on a/c		3000 —	3000 —			
	Union exp		100 —				
27	"		100 —				
26	Carey - 300 + 5 @ 73 6900		4280 —	4280 —			
21	" Bal on 150		600 —	600 —			
21	" 50 + 5		1200 —	1200 —			
26	Judge		100 —				
27	Miss F Exch		1000 —			1000 —	
	" " Pers Bonus		250 —				
29	Isenberry 50 + 5		1200 —	1200 —			
29	Carey		820 —	820 —			
	Total Paid out		396915	361291	742 —	27040	
	Total received		40417 80				
	Balance on hand 12/29		7664				
1/8			13994				
			476				
1/1	Paid out		12899				
			86064				
			575				
	on hand 1/10/45		2011				

[fol. 366]

DEFENDANTS' EXHIBIT 64C

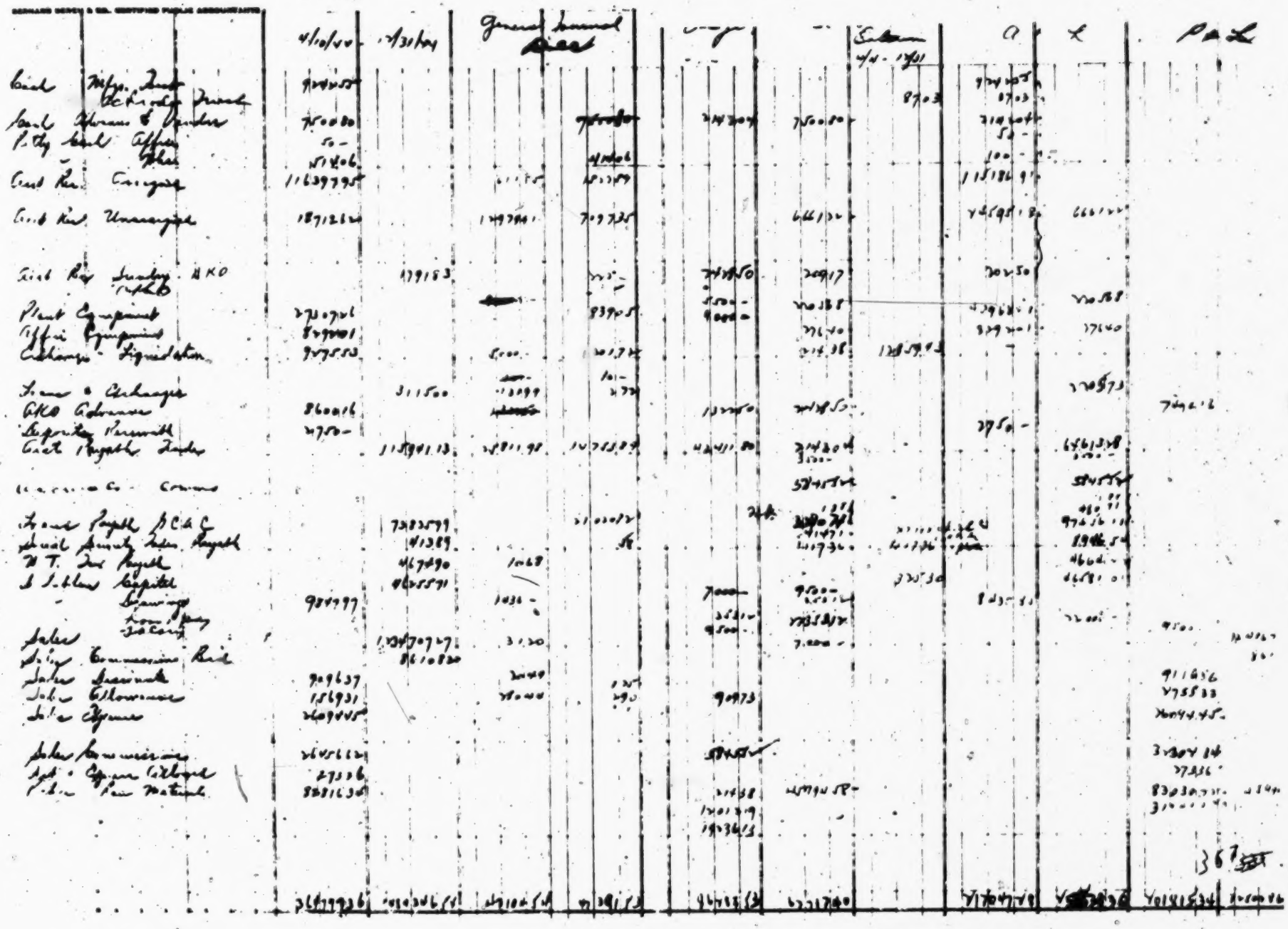


[fol. 367]

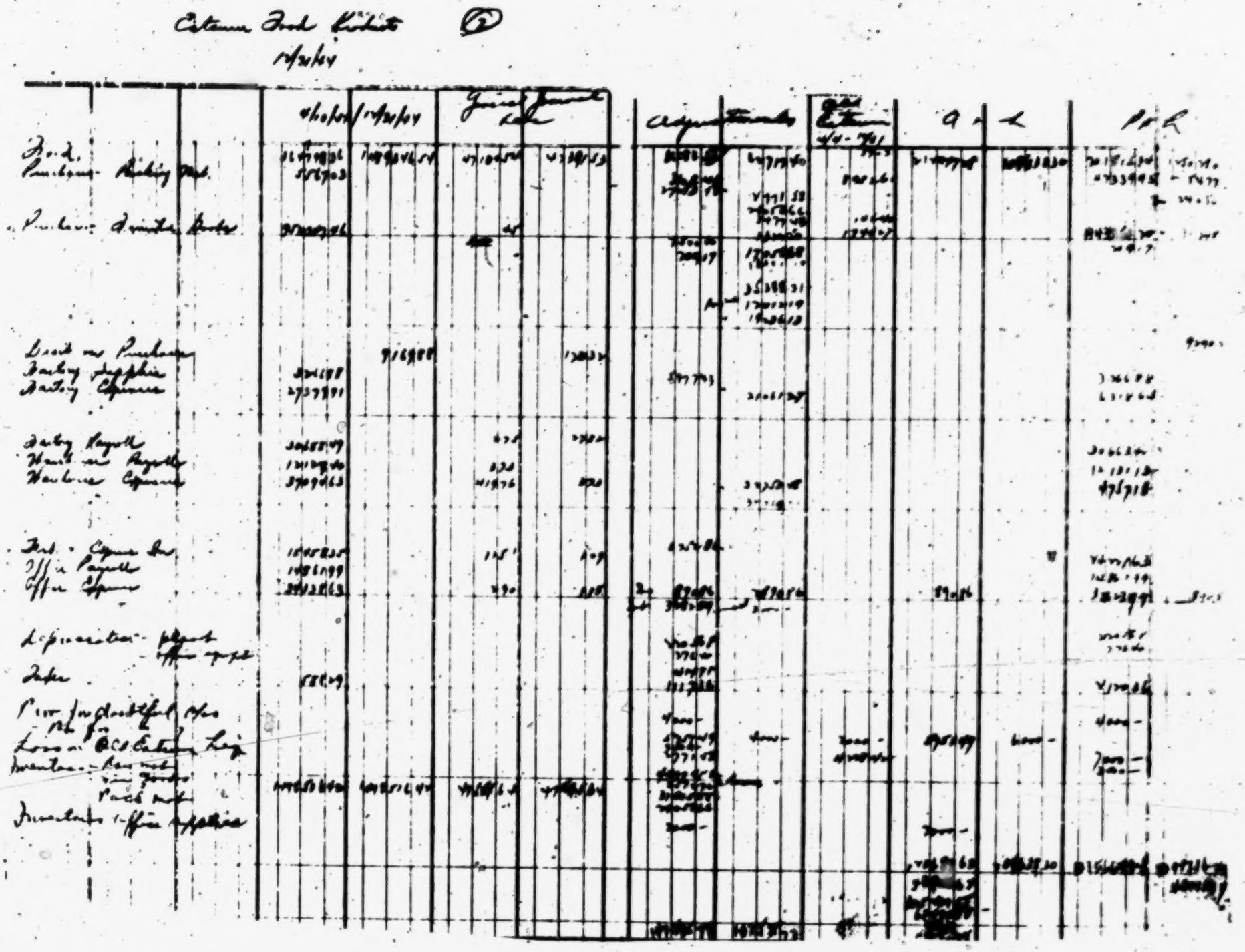
DEFENDANTS' EXHIBIT 64D

Citizens Bank Pendleton

12/31/54

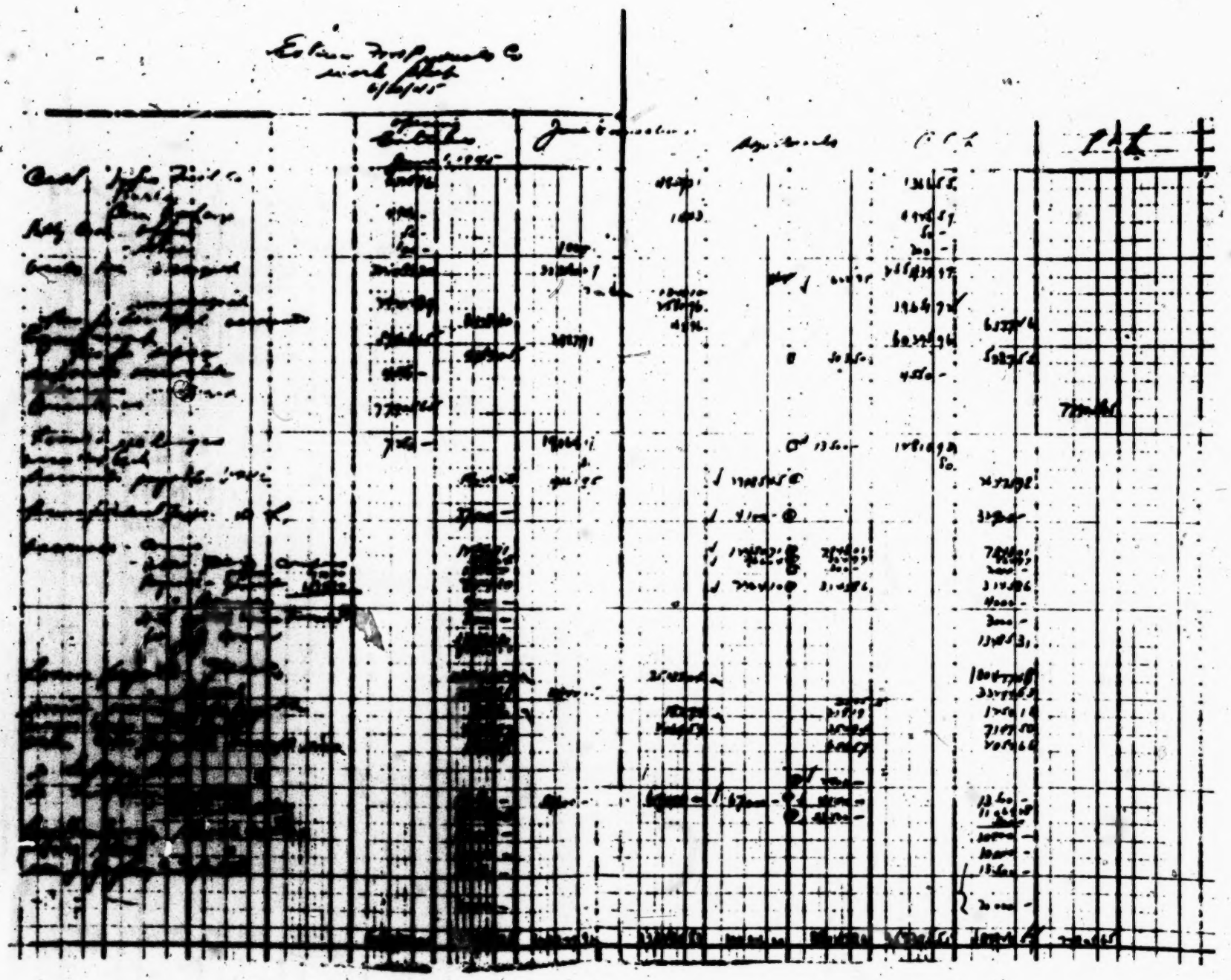


[fol. 368]



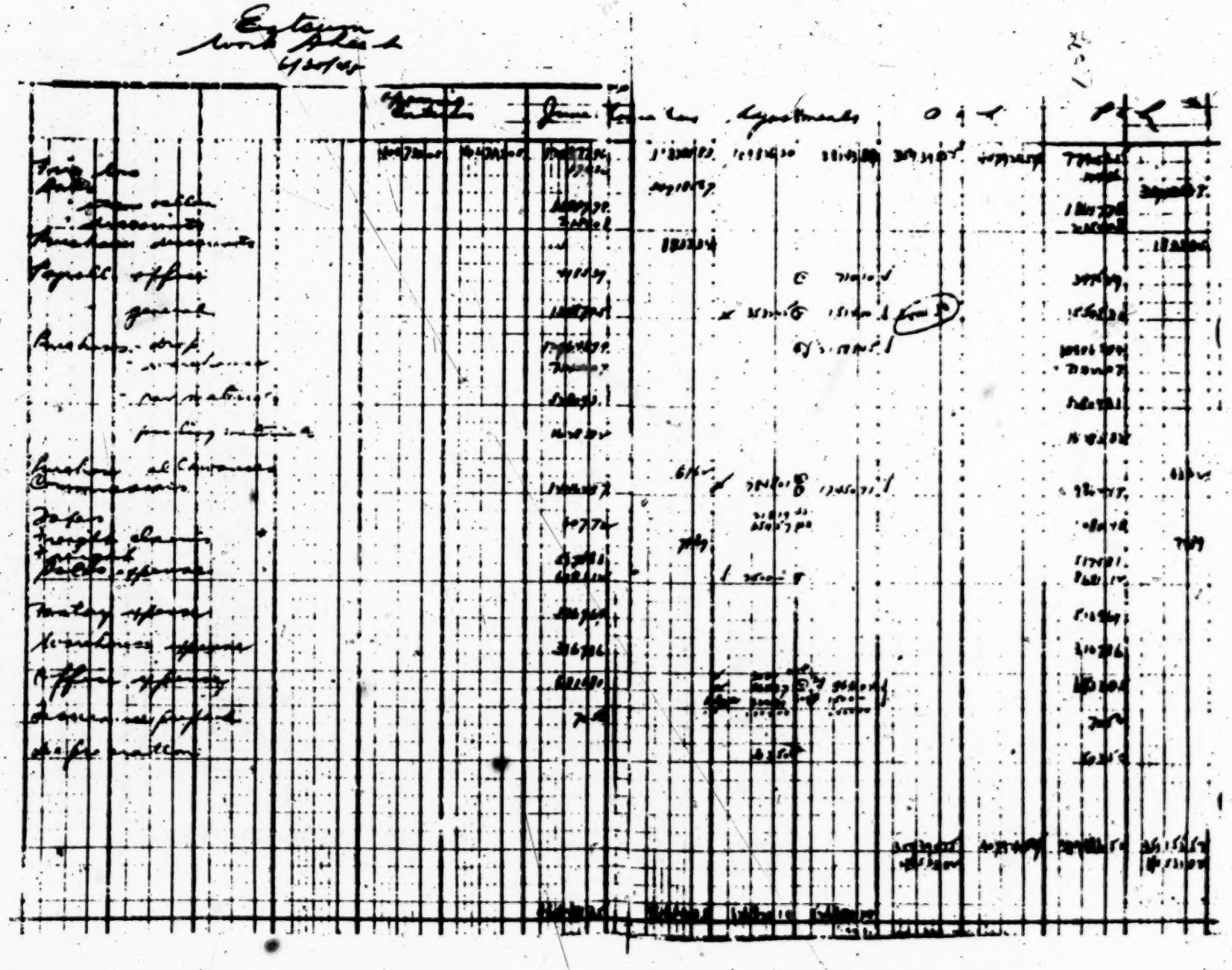
[fol. 369]

DEFENDANTS' EXHIBIT 64E



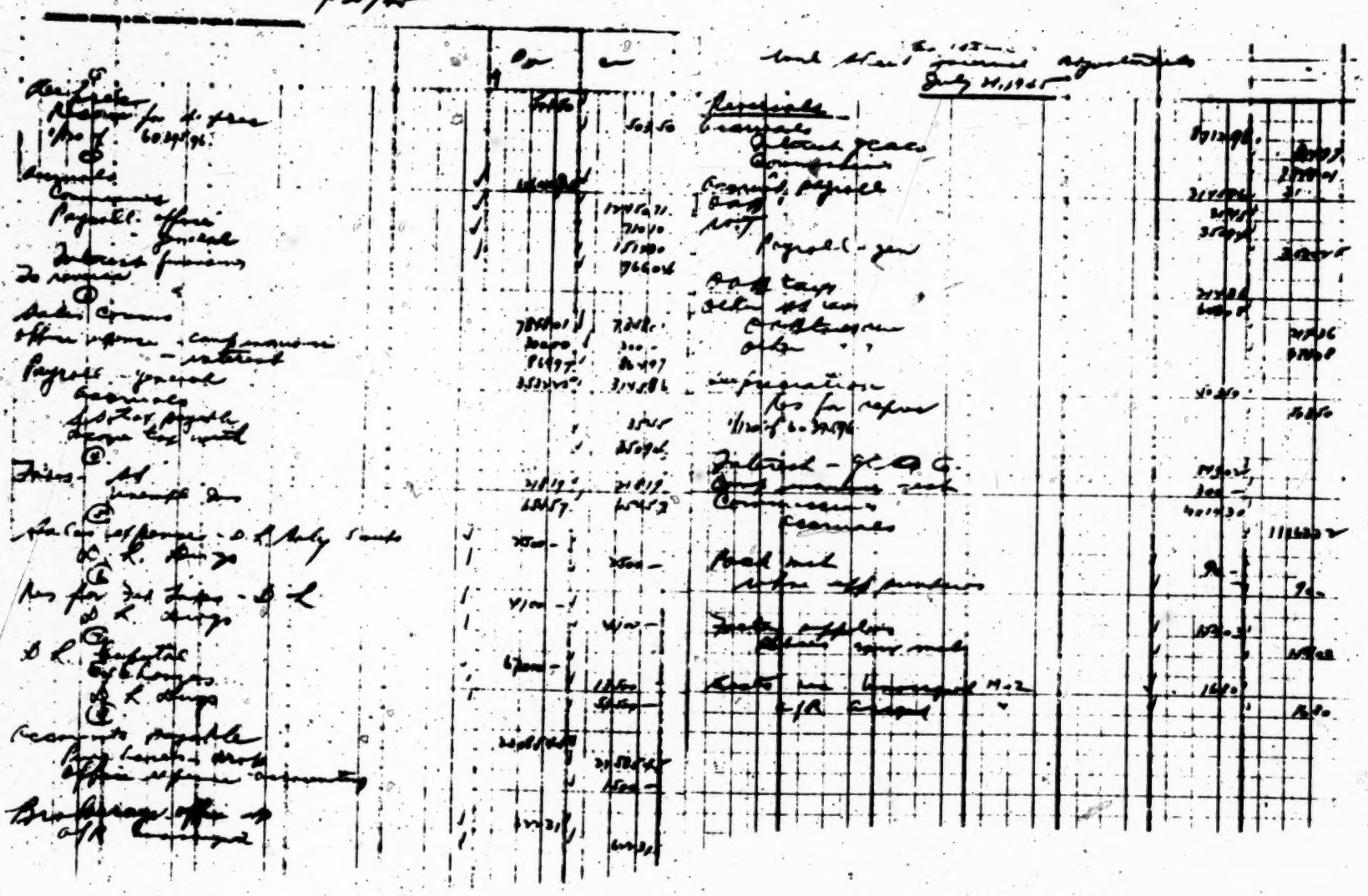
[fol. 370]

DEFENDANTS' EXHIBIT 64F



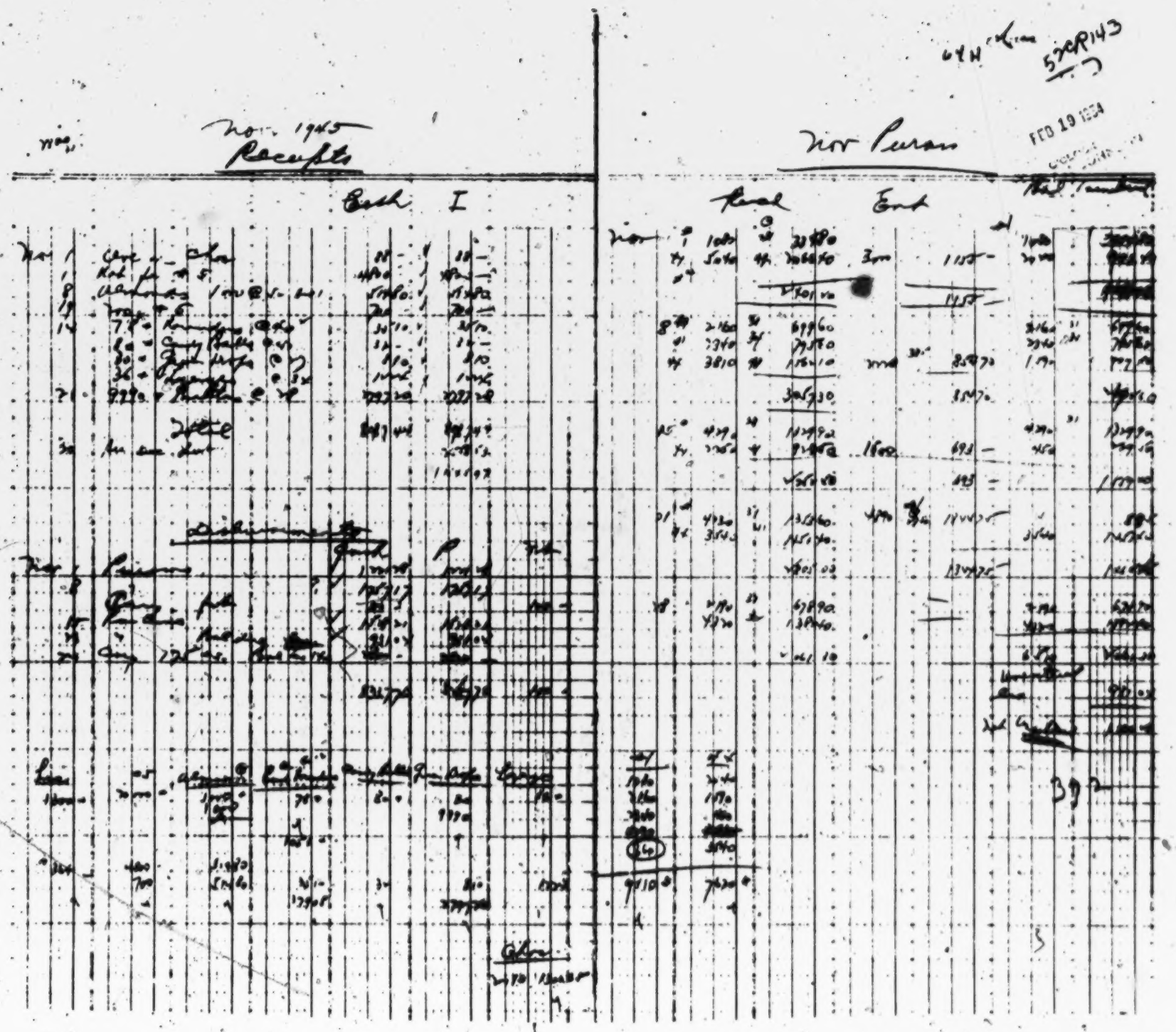
[fol. 371]

DEFENDANTS' EXHIBIT 64G



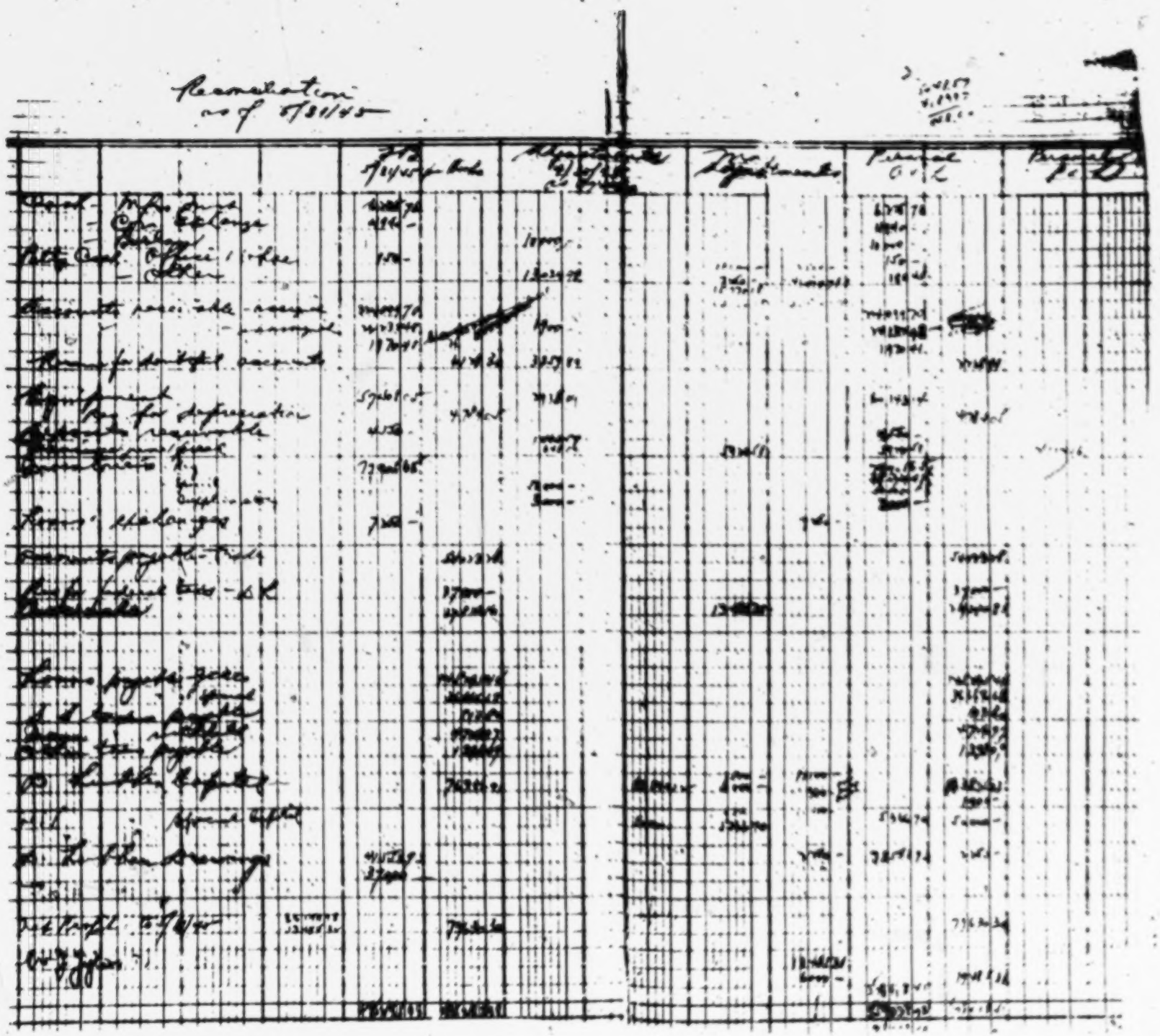
[fol. 372]

DEFENDANTS' EXHIBIT 64H



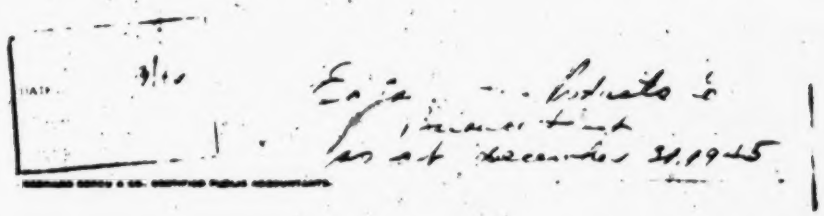
[fol. 373]

DEFENDANTS' EXHIBIT 64-J



[fol. 375]

DEFENDANTS' EXHIBIT 64K



DATE 3/10 Estate — Estate & Investment as at December 31, 1945

A S S E T S

CURRENT assets:		
Cash - Manufacturers Trust Co.		
Corp Exchange Bank	5000	
on Hand	95000	
Total Cash		
Accounts Receivable - Assigned	177268 70	
Unassigned		
Total Accounts Receivable	177268 70	
Less: Reserve for Doubtful Accounts	6 11793	
Net Accounts Receivable		190905 97
Merchandise Inventories - at cost		
Cash Advances to Vendors	1108939	
Total Current Assets		1484383
Land and Equipment - Cost	343834	
Less: Reserve for Depreciation	121183	
Net - Plant and Equipment		222651
Other Assets:		
Deposits Receivable	4600	
Loans Receivable	77915	
Insurance Prepaid	4169	
Total Other Assets		86684
TOTAL ASSETS		4098677

L I A B I L I T I E S AND C A P I T A L

Liabilities:		
Accounts Payable		283791
Accruals - Commissions, etc.		37697
Loans Payable - U.S.A.Co.		112500
Social Security, Withholding Taxes, etc.		6777
U.S. Treasury, Reserve for Federal Tax		18397
Total Current Liabilities		1914682
Capital Accounts:		
D.G.L. & Associates - Capital	33500	
D.G.L. Expense Investment	13483	
Add: Share of Profit for Year	1573480	
Total	1573480	
Less: Drawings	46669	
Total D.G.L. & Associates - Capital		1063091
J.J.L. & Associates - Capital	33500	
J.J.L. & Associates - Share of Profit for Year	13483	
J.J.L. & Associates - Share of Profit b/f to	1573480	
Total	1573480	
Less: Drawings		
Total Capital Balance of Partners		1173481
TOTAL LIABILITIES AND CAPITAL		4098677

EXHIBIT "A"

(10/19/... 5 PM)

Monies disbursed by D Lubben

Cash Disbursements

May, 1945

		Total	Mdse		Rec. ticket #
	Legal - Mdse		1460 —		
	R.S. - 38 Dextrose		532 —		2108 4/20/45
	" 110 "		1540 —		
	" Depon 500 Sugar		2500 —		
	500 Deft		2875 —		
Jgen -	22 Drydex @ 9.25		203.50		
	28 Cerelose 14 —		392 —		
	136 9 Rose Syrup @ 5½		116.68		
	Freight Cr		(2781)		
R.S. -	689 Sugar Deposit		3445 —		
	50 Deft @ 14 —		700 —		
Hoke-Kan	Mare 590		214 —		
May 17	Natl Process @ 7.75		457.50		
18	Kurtz 400 @ 6.75 / 98 @ 5.75		326.50	(Kooway)	
	" Depon 200		2400 —		
22	R.S. - Bal. 179 bags		1074 —		
	Natl Process - 36 @ 3¼		1197.59		
	R.S. Cons. 179 bags		447.50		
21	Natl Process 200 Pecker 97		1950 —		
23	R.S. - 90 @ 13.50		1215 —		
24	S. Rich - Carnauba 100		41 —		
	Kurtz bdy - 598 @ 1 — / 200 @ 50 / 600 @ 7 —		3691 —		
	1209 oz				
25	Jgen 50 @ 14.50		725 —		
29	Kurtz 200 @ 6.75		1350 —		
			3447.71		
	R.S. for Sugar		7250 —		
	Total		4272.71		

a = checked to L.J.R. analysis of currency

Receipts

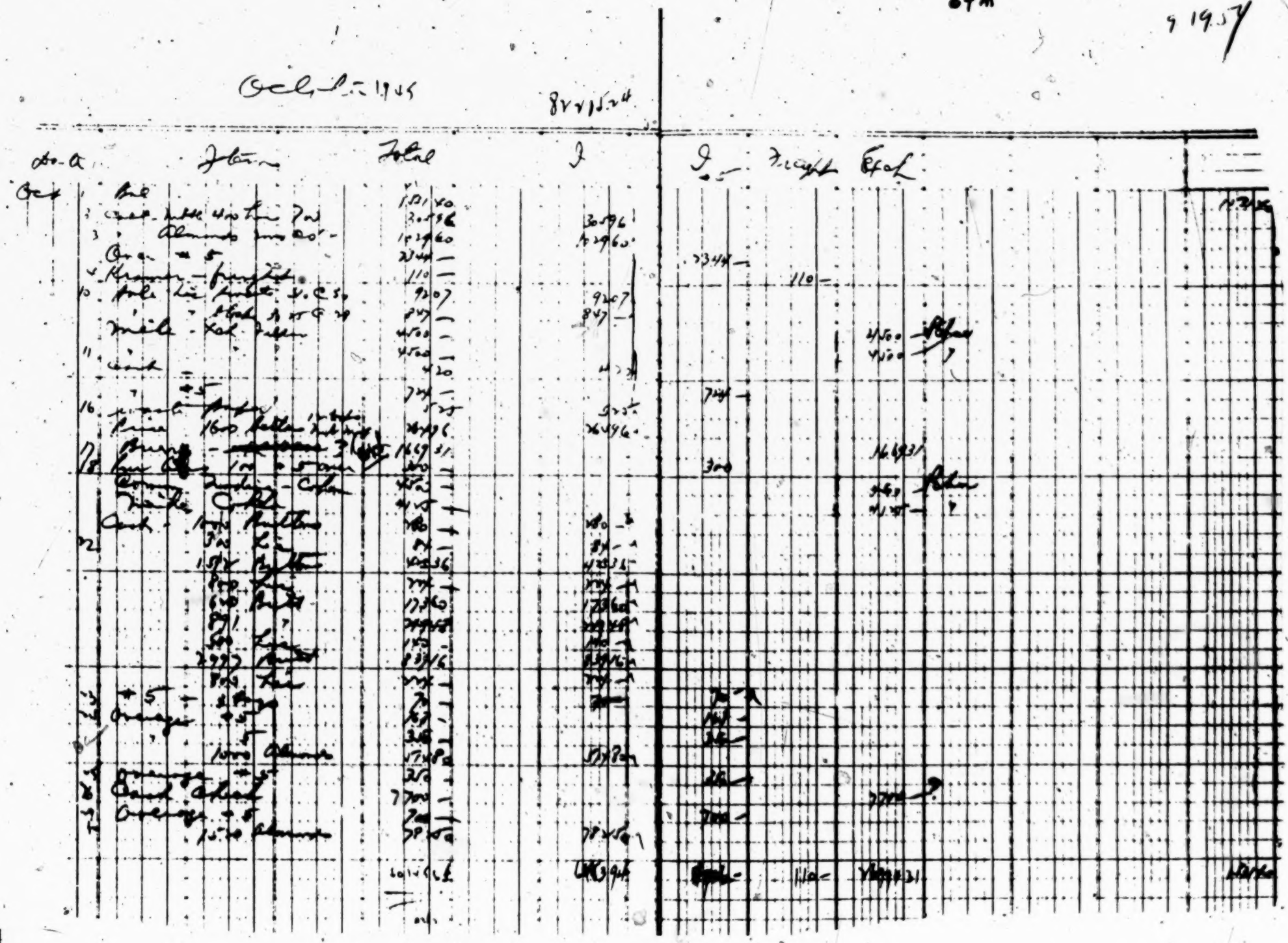
		Total			
May 1	Balance	32465	37400		
	Rec DL	[illegible]	[illegible]		
	RS	4782	[illegible]		
17	RW - SR	52173		52173	
21	D	600	600		
21	Blueal	36550		36550	
24	SR - Rupp	3000		3000	
24	Rec 19706	3152		3152	
25	RB - 6649. 32	33268		33268	
1	D	15000	15000		
18	Eval -	750			750
	Totals	471554	413898	157718	750

Disbursements

May		Total	D	P	Exp
	Rain	100			100
	DL Legal	1460		1460	
	RS - 38 Dept	532		532	
	" Travel	52			52
	" 110 Dept	1540		1540	
	" Dept @ 500 S	2500		2500	
	500 Dept	2825		2825	
	Gen - 20 Dept @ 10	20350		20350	
	20 Cultura 12	392		392	
	1361 Gen @ 1/2 + Freight	11681		11681	
	RS - 6445 Dept	34465		34465	
	" 50 Dept @ 14.	700		700	
	DL - [illegible]	3500	3500		
	" Tria Aquatic	100			100
	" Tabulation	214		214	
17	RS - for S	7450		7450	
	Dept - 59. 4245	49 7235		49 3200	
	Dept Hancock	200			200
18	Hancock 22 45 30	32150		32150	
	" Dept @ 200 Eng	24600		24600	
21	RS - Labor 1995	1074		1074	
	Dept - 3649 @ 3.26	11975		11975	
	RS - Com @ 179	4425		4425	
24	Dept 200 Eng	1950		1950	
	" RS - 9.50 @ 135	1315		1315	
25	P - Quarterly Insp	44		44	
	[illegible]				
	[illegible]				
	[illegible]		

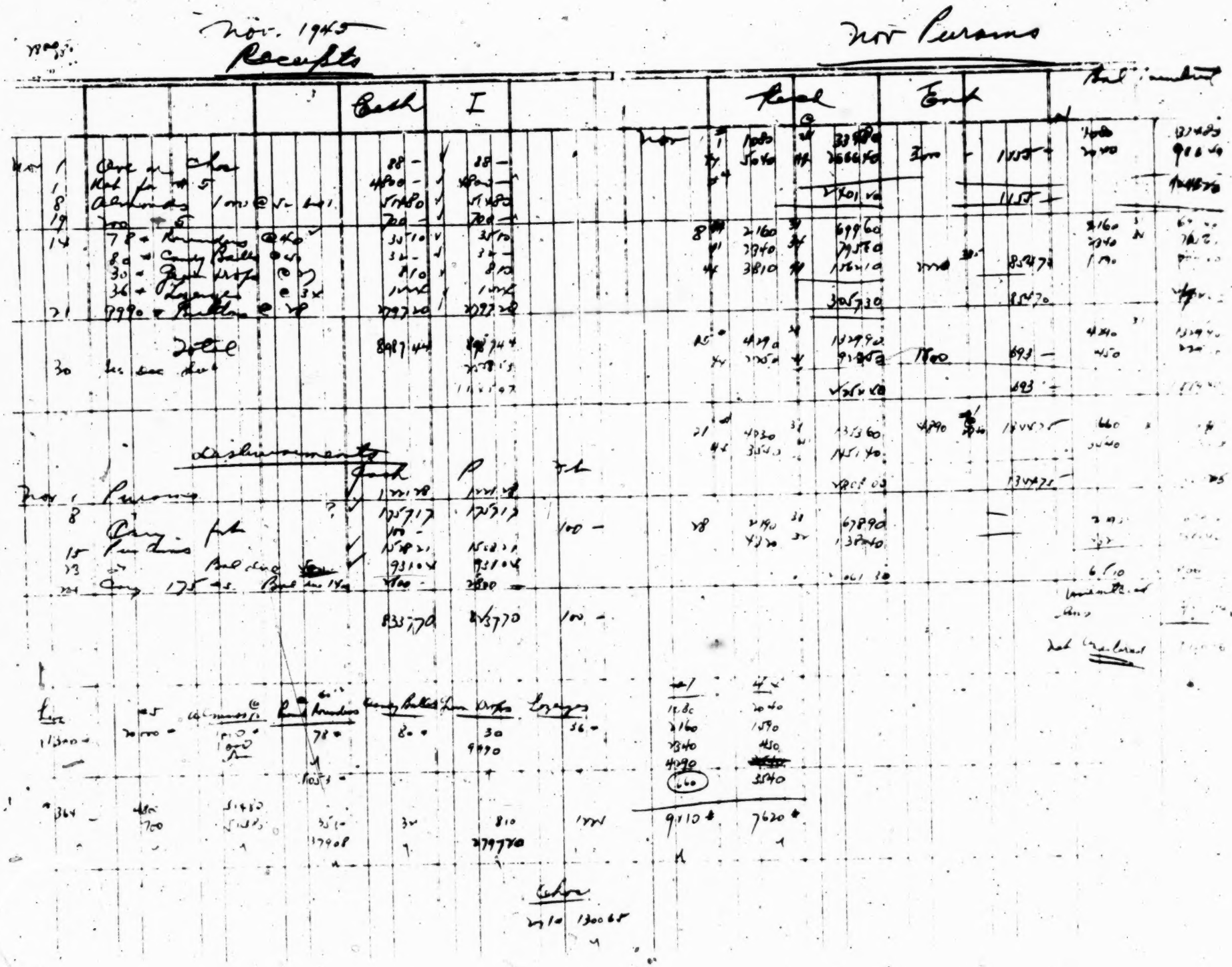
[fol. 381]

DEFENDANTS' EXHIBIT 64M



[fol. 382]

DEFENDANTS' EXHIBIT 64N



[fol. 384]

DEFENDANTS' EXHIBIT 64T

BATHEN FOOD PRODUCTS CO.

BALANCE SHEET

AS AT OCTOBER 31, 1945

ASSETS

Current Assets:		
Cash - Manufacturers Trust Co.	$ 27,214.96	
Corn Exchange Bank	5,000.00	
On Hand	279.99	
Total Cash		$ 32,494.95
Accounts Receivable - Assigned	$433,127.75	
Unassigned	30,247.11	
Total Accounts Receivable	$463,674.86	
Less: Reserve for Doubtful Accounts	6,209.43	
Net Accounts Receivable		$457,465.43
Merchandise Inventories - At Cost		-
		$ 24,502.42
Total Current Assets		$514,462.80
Plant and Equipment - Cost	$ 76,641.44	
Less: Reserve for Depreciation	7,665.53	
Net - Plant and Equipment		$ 68,975.91
Other Assets:		
Deposits Receivable	$ 4,550.00	
Insurance Prepaid	3,578.77	
Total Other Assets		$ 8,128.77
TOTAL ASSETS - Exclusive of Inventories		$591,567.48

EXHIBIT "A"

LIABILITIES AND CAPITAL

Current Liabilities:		
Accounts Payable	$ 12,237.56	
Accruals - Commissions, etc.	23,233.82	
Loans Payable - C.C.A.Co.	317,788.31	
Social Security, Withholding Taxes, etc.	6,914.12	
D. G. Labbee, Reserve for Federal Tax	26,353.97	
Exchange Payable	12.80	
Total Current Liabilities		$416,536.58
Capital Accounts:		
I. G. L. & Associates - Capital	$ 33,500.00	
D. G. L. Excess Investment	13,165.31	
	$ 46,965.31	
Less: Drawings $ 4,670.28		
R. Stone 10,000.00	$ 14,670.28	
	$ 32,315.03	
D. G. L. & Associates - Share of Profit 6/ to 10/31/45 without inventory	47,865.28	
Total D.G.L. & Associates - Capital		$ 80,180.31
W.J.G. & Associates - Capital	$ 33,500.00	
W.J.G. & Associates - Share of Profit for May	13,165.31	
	$ 46,965.31	
W.J.G. & Associates - Share of Profit 6/ to 10/31/45 without inventory	47,865.28	
Total W.J.G. & Associates - Capital		$ 94,830.59
Total Capital		$175,030.90
TOTAL LIABILITIES AND CAPITAL		$591,567.48

BERNARD BERCU & CO.
CERTIFIED PUBLIC ACCOUNTANTS

[fol. 386]

DEFENDANTS' EXHIBIT 64U

[illegible]

[illegible]

	JUNE 1 - NOVEMBER 30, 1946			MONTH OF NOVEMBER, 1946		
Total Sales		$3,361,426.23			$ 718,172.99	
Less: Discounts	$ 12,292.07			$ 2,496.83		
Returns and Allowances	12,045.92	24,337.99		26.65	2,470.18	
Income from Sales			$3,337,088.24			$ 715,702.81
Add: Commissions Received			6,281.29			1,564.17
Total Income			$3,343,349.53			$ 717,266.98
Cost of Sales:						
Opening Inventory		$ 77,905.45				
Purchases - Jams & Jellies)						
Other Finished Goods)						
Raw Materials)						
Packing Materials)	$2,637,847.87			$ 495,738.41		
Discounts and Allowances	21,119.19			4,650.57		
Factory Payroll	97,427.67	$2,714,156.35		16,155.97		
Total Stock Available		$2,792,062.00			$ 507,243.81	
Less: Closing Inventory						
Fire Loss Recovery (net)		12,527.22			-	
Cost of Sales			$2,779,534.78			$ 507,243.81
GROSS PROFIT ON SALES			$ 563,814.75			$ 210,023.17
Deductions:						
Factory Expenses - Schedule 1		$ 21,496.40			$ 2,059.31	
Warehouse Expenses - Schedule 2		8,286.87			910.50	
Freight		38,746.51			10,062.69	
Sales Expenses - Schedule 3		147,797.48			39,738.28	
General and Administrative Expenses - Schedule 4		109,427.46			18,004.60	
Depreciation		3,515.16			633.68	
Total Deductions			$ 329,470.08			$ 71,409.06
NET PROFIT FOR PERIOD			$ 234,344.67			$ 138,614.11

EXHIBIT "B"

BERNARD BERCU & CO.
CERTIFIED PUBLIC ACCOUNTANTS

EATSUM FOOD PRODUCTS CO.

BALANCE SHEET

AS AT NOVEMBER 30, 1945

A S S E T S

Current Assets:			
Cash - Manufacturers Trust Co.	$ 52,964.73		
Corn Exchange Bank	4,999.80		
on Hand	450.00		
Total Cash		$ 58,414.53	
Accounts Receivable - Assigned	$513,765.30		
Unassigned	17,695.17		
Total Accounts Receivable	$531,460.47		
Less: Reserve for Doubtful Accounts	6,211.93		
Net Accounts Receivable		525,248.54	
Exchanges Receivable		67,284.47	
Total Current Assets			$650,947.54
Plant and Equipment - Cost		$ 84,383.94	
Less: Reserve for Depreciation		8,299.21	
Net - Plant and Equipment			76,084.73
Other Assets:			
Deposits Receivable		$ 4,550.00	
Insurance Prepaid		3,531.55	
Total Other Assets			8,081.55
TOTAL ASSETS			$735,113.82

L I A B I L I T I E S A N D C A P I T A L

Current Liabilities:				
Accounts Payable			$ 14,295.30	
Accruals - Commissions, etc.			27,792.48	
Loans Payable - G. C. A. Co.			370,[illegible].74	
Social Security, Withholding Taxes, etc.			10,098.35	
D. G. Lubben, Reserve for Federal Tax			26,383.97	
Exchange Payable			4.40	
Total Current Liabilities				$448,584.24
Capital Accounts:				
D.G.L. & Associates - Capital		$ 33,500.00		
D.G.L. Excess Investment		13,485.31		
		$ 46,985.31		
Less: Drawings	$ 19,285.71			
R. Stone	10,000.00	29,285.71		
		$ 17,699.60		
D.G.L. & Associates Share of Profit 6/1 to 11/30/45 Without Inventory		117,172.33		
Total D.G.L. & Associates - Capital			$134,871.93	
W.J.G. & Associates - Capital		$ 33,500.00		
W.J.G. & Associates - Share of Profit-May		13,485.31		
		$ 46,985.31		
Less: Drawings		12,500.00		
		$ 34,485.31		
W.J.G. & Associates - Share of Profit 6/1 to 11/30/45 Without Inventory		117,172.34		
Total W.J.G. & Associates - Capital			151,657.65	
Total Capital				286,529.58
TOTAL LIABILITIES AND CAPITAL				$735,113.82

EXHIBIT "A"

Bernard Berry & Co.
Certified Public Accountants

EATSUM FOOD PRODUCTS CO.

JUNE 1 - OCTOBER 31, 1945

Schedule 1 - Factory Expenses

Supplies	$ 3,755.58	
Repairs	11,071.66	
Office Supplies	595.73	
Rent	1,000.00	
Advertising for Help	367.90	
Telephone	145.02	
Light and Power	2,331.45	
Water	130.10	
Sundries	165.35	
Total Factory Expenses		$19,637.09

Schedule 2 - Warehouse Expenses

Rent	$ 1,750.00	
Repairs	2,469.76	
Telephone	190.62	
Laundry	153.07	
Light and Power	794.34	
Supplies	265.57	
Sanitation	165.00	
Postage	72.24	
Donations	10.41	
Sundries	277.68	
Packing - outside	823.69	
Storage	125.00	
Total Warehouse Expenses		$ 7,376.37

Schedule 3 - Selling Expenses

Commissions - Ewald	$60,293.54	
Others	1,479.84	
Total Commissions	1,033.38	
Entertaining and Traveling	65.12	
Advertising	2,215.03	
Telephone	730.43	
Sundries	1,173.14	
Expense - R. Hankermeyer	25.25	
Wm. Heitmann	3,837.08	
J. Keenan	230.00	
D. G. Lubben	969.59	
Wm. J. Miglio	11,000.00	
F. Loperfido	10,000.00	
Salaries - D. G. Lubben	5,000.00	
Wm. J. Miglio	5,000.00	
R. Hankermeyer	5,000.00	
F. Loperfido		
R. Stone		
Total Selling Expenses		$109,099.40

Schedules 1 - 2 - 3

BERNARD BERCU & CO.
CERTIFIED PUBLIC ACCOUNTANTS

EATSUM FOOD PRODUCTS CO.

JUNE 1 - OCTOBER 31,1945

Schedule 4
General and Administrative Expenses

Office Salaries	$19,553.43
Interest and Finance Charges	25,327.58
Insurance	42.67
Insurance, Compensation	1,700.00
Stationery and Printing	1,872.45
Repairs	539.85
Rent	1,020.60
Equipment Rentals	142.91
Storage	3,278.48
Light and Power	58.35
Telephone and Telegraph	1,679.91
Accounting	4,500.00
Legal	521.86
Dues and Subscriptions	1,156.08
Collection Charges	74.02
Bank Charges	252.25
Postage	942.80
Samples	397.86
Sundries	3,216.00
Tavern Charges	1,943.02
Buying Expense	1,000.00
Donations and Charities	15,825.00
Brokerage	511.14
Social Security and Unemployment Taxes	4,279.98
TOTAL GENERAL & ADMINISTRATIVE EXPENSES	$91,422.06

[fol. 389]

Schedule 4

BERNARD BERCU & Co.
CERTIFIED PUBLIC ACCOUNTANTS

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EATSUL FOOD PRODUCTS CO.

STATEMENT OF INCOME, PROFIT AND LOSS

JUNE 1 - OCTOBER 31, 1945

Sales:			
Jams and Jellies			
Other			
Total Sales		$2,643,253.24	
Less Discounts	$ 9,795.24		
Returns and Allowances	12,092.57	21,887.81	
Income from Sales			$2,621,365.43
Add: Commissions Received			4,717.12
Total Income			$2,626,082.55
Cost of Sales:			
Opening Inventory		$ 77,905.65	
Purchases - Jams and Jellies			
Other Finished Goods			
Raw Materials			
Packing Materials	$1,112,109.46		
Discounts & Allowances	15,169.62		
Factory Payroll	91,271.70	$2,206,512.54	
Total Stock Available		$2,294,918.19	
Less: Closing Inventory	-		
Fire Loss Recovery (net)	$ 12,527.22	$ 12,527.22	
Cost of Sales			$2,272,250.97
GROSS PROFIT ON SALES			$ 353,791.58
Deductions:			
Factory Expenses - Schedule 1		$ 15,637.09	
Warehouse Expense - Schedule 2		7,376.37	
Freight		29,683.82	
Sales Expenses - Schedule 3		109,059.40	
Office Expenses - Schedule 4		91,122.86	
Depreciation		2,991.48	
Total Deductions			$ 259,061.02
NET PROFIT FOR PERIOD			$ 95,730.56

EXHIBIT "B"

BERNARD BERCU & CO.
CERTIFIED PUBLIC ACCOUNTANTS

EATRUM FOOD PRODUCTS CO.

EXPENSE SCHEDULES

	JUNE 1 - NOVEMBER 30, 1945		MONTH OF NOVEMBER 1945	
Schedule 1 - Factory Expenses				
Supplies	$ 4,143.04		$ 347.06	
Repairs	11,825.98		754.22	
Office Supplies	636.58		50.85	
Rent	1,500.00		500.00	
Advertising for Help	367.80		-	
Telephone	226.05		37.03	
Light and Power	2,561.05		229.60	
Sundries	169.35		3.00	
Water	267.65		137.55	
Total Factory Expenses		$ 21,696.40		$ 2,059.31
Schedule 2 - Warehouse Expenses				
Rent	$ 2,100.00		$ 350.00	
Repairs	2,488.76		20.00	
Telephone	217.64		37.02	
Laundry	514.50		61.43	
Light and Power	945.98		161.64	
Supplies	323.29		57.72	
Sanitation	195.00		30.00	
Postage	102.76		30.52	
Donations	10.41		-	
Sundries	314.85		37.17	
Packing - outside	823.68		-	
Storage	250.00		125.00	
Total Warehouse Expenses		8,296.87		910.50
Schedule 3 - Selling Expenses				
Commissions	$89,353.92		$9,060.38	
Entertaining and Traveling	3,161.90		1,692.96	
Advertising	1,133.38		100.00	
Expense - R. Hankermeyer	749.93		15.50	
Wm. Heitman	1,473.14		300.00	
J. Keenan	42.16		12.91	
D. G. Lubben	4,684.28		847.20	
Wm. J. Ciglio	230.00		-	
F. Loperfidio	1,116.09		146.50	
R. Stone	5.00		5.00	
Telephone	132.95		63.83	
Sundries	2,215.03		-	
Salaries - D. G. Lubben	13,500.00		2,500.00	
Wm. J. Ciglio	12,500.00		2,500.00	
R. Hankermeyer	6,250.00		1,250.00	
F. Loperfido	6,250.00		1,250.00	
R. Stone	5,000.00		-	
Total Selling Expenses		$147,797.68		$19,738.28

Schedules 1 - 2 - 3

BERNARD BERCU & CO.
CERTIFIED PUBLIC ACCOUNTANTS

[fol. 391]

KATEUM FOOD PRODUCTS CO.

EXPENSE SCHEDULE

	JUNE 1 - NOVEMBER 30,1945	MONTH OF NOVEMBER, 1945
Schedule 4 - General and Administrative Expenses		
Office Salaries	$23,778.25	$ 5,194.82
Interest and Finance Charges	36,682.15	7,354.57
Insurance	99.99	47.22
Insurance, Compensation	2,100.00	400.00
Stationery and Printing	1,929.15	55.70
Repairs	571.65	31.80
Rent	1,438.50	417.90
Equipment Rentals	221.67	78.76
Storage	3,553.66	275.18
Light and Power	149.15	50.80
Telephone and Telegraph	1,989.03	310.22
Accounting	6,500.00	2,000.00
Legal	521.96	-
Dues and Subscriptions	1,156.08	-
Charities and Donations	17,900.00	2,075.00
Collection Charges	74.02	-
Bank Charges	302.25	50.00
Postage	1,142.05	299.25
Social Security, Unemployment Taxes	1,991.06	311.08
Samples	397.96	-
Tavern Charges	913.16	1,125.86
Sundries	3,298.69	52.68
Brokerage	1,001.46	11.35
Buying Expense	1,000.00	-
Advertising	5.19	5.19
Entertainment	225.65	225.65
Total General & Administrative Expenses	$105,427.46	$19,004.60

EXHIBIT VOLUME II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1962

No. [redacted] 16

THE SHOTWELL MANUFACTURING COMPANY, ET AL., PETITIONERS,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 9, 1961

CERTIORARI GRANTED DECEMBER 18, 1961

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 142

THE SHOTWELL MANUFACTURING COMPANY, ET AL., PETITIONERS,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

VOLUME I

GOVERNMENT EXHIBITS

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6A	Ledger Sheet for Shotwell from Accounts Payable ledger of Eatsum sole proprietorship for period June, 1944 to May, 1945	1	1
6B	Ledger Sheet for Shotwell from Accounts Payable ledger of Eatsum sole proprietorship for May, 1944	3	3
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10B	Purchases Sheet from Purchase book of Reserve Trading for period October to November, 1946	6	6
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10E	Cash disbursement sheet of Reserve Trading for October, 1946	9	9
10F	Cash disbursement sheet of Reserve Trading for November, 1946	10	10

		Original	Print
13	Lubben's instruction sheet to Heitman re two checks (Exhibits 92 and 93)	11	11
14	Check No. 3017 from Lubben to Cain in amount of $13,894.03	12	12
14A	Check No. 3018 from Lubben to Sullivan in amount of $13,894.03	13	13
14B	Check No. 3019 from Lubben to Huebner in amount of $13,894.03	14	14
14C	Lubben's Memorandum re checks No. 3017, 3018, 3019 (Exhibits 14, 14A and 14B)	15	15
23A	Shotwell invoice No. 60254, dated December 26, 1944, to Eatsum for 683 cases Gum Drops, 20,494 lbs. @ 7¼¢. Invoice price $1,587.98; overage in pencil $3,480; total $6,177	17	17
24A	Shotwell invoice No. 61544, dated January 10, 1945, to Eatsum for 508 cases Spice Drops, 15,240 lbs. @ 8¼¢. Invoice price $1,257.30; overage in pencil $1,524; total $2,781.30	18	18
25	Eatsum check No. 2484, in the amount of $5,018.37, to Shotwell in payment of invoices 61904, 59931, 61830, 64176 (Exhibits 25A-25D)	19	19
25A	Shotwell invoice No. 59931, dated January 13, 1945, to Eatsum for 447 cases Spice Buttons, 13,410 lbs. @ 8¼¢. Invoice price $1,106.33; overage in pencil $1,341; total $2,447.33	20	20
27A	Eatsum recap sheet, dated January 10, 1945, re money due Shotwell for overages	21	21
28	Eatsum check No. 2593, dated February 6, 1945, in the amount of $6,183, payable to cash	23	23
29	Eatsum check No. 2844, in the amount of $2,146.55, to Shotwell in payment of invoices 68817 and 70524 (Exhibits 29A, 29B)	25	24
29A	Shotwell invoice No. 68817, dated February 8, 1945, to Eatsum for 445 cases Gum Drops, 13,350 lbs. @ 7¼¢. Invoice price $1,034.63; overage in pencil $1,335; total $2,369.63	27	25

		Original	Print
30	Eatsum check No. 3057, in the amount of $4,884.97, to Shotwell in payment of invoices 70683, 70866, 70944, 71295 (Exhibits 30A-30D)	28	26
30A	Shotwell invoice No. 70683, dated February 23, 1945, to Eatsum for 485 cases Spice Buttons, 14,550 lbs. @ 8¼¢. Invoice price $1,200.38; overage in pencil $1,455.00; total $2,655.38	30	27
31	Eatsum check No. 3102, in the amount of $1,099.73, to Shotwell in payment of invoices 71541, 71778, 73132, 73448, 74510 (Exhibits 31A-31E)	31	28
31A	Shotwell invoice No. 71541, dated February 28, 1945, to Eatsum for 473 cases Gum Drops, 14,190 lbs. @ 7¾¢. Invoice price $1,099.73; overage in pencil $1,419.00; total $2,518.73	32	29
32	Eatsum check No. 3279 in the amount of $1,091.41, to Shotwell in payment of invoice 75029 (Exhibit 32A)	33	30
33A	Shotwell invoice No. 76054, dated March 28, 1945, to Eatsum for 496 cases Gum Drops, 14,880 lbs. @ 7¾¢. Invoice price $1,153.20; overage in pencil $1,488; total $2,641.20	35	31
34A	Shotwell invoice No. 75244, dated March 23, 1945, to Eatsum for 479 cases Gum Drops, 14,370 lbs. @ 7¾¢. Invoice price $1,113.68; overage in pencil $1,437; total $2,550.68	36	32
35	Eatsum check No. 3438, in the amount of $14,930.24, to Shotwell in payment of certain invoices (Exhibits 35A-35H)	37	33
35A	Shotwell invoice No. 77136, dated April 1, 1945, to Eatsum for 258 cases Citrus Drops, 7740 lbs. @ 13¢. Invoice price $1,006.20; overage in pencil $774; total $1,780.20	39	34
36	Eatsum check No. 3455, in the amount of $10,976, to Shotwell in payment of invoice 79451 (Exhibit 36A)	40	35

		Original	Print
36A	Shotwell invoice No. 79451, dated April 14, 1945, to Eatsum for 1,250 cases Cardinal Chocolates, 30,000 lbs. @ 37⅓¢. Invoice price $11,200; overage in pencil $5,625; total $16,825	42	36
37	Eatsum check No. 3596, in the amount of $2,672 to Shotwell in payment of invoice 80602 (Exhibit 37A)	43	37
37A	Shotwell invoice No. 80602, dated April 20, 1945, to Eatsum for 530 cases Gum Drops, 15,900 lbs. @ 7¼¢, and 167 cases Cardinal Chocolates, 4,008 lbs. @ 37⅓¢. Invoice price $2,728.57 (Gum Drops $1,232.25; Chocolates $1,496.32); overage in pencil $2,341.50 (Gum Drops $1,590; Chocolates $751.50); total $5,070.70	45	38
40	Eatsum check No. 2887, dated March 6, 1945, in the amount of $18,000, payable to cash	46	39
40A	Eatsum cash authorization slip, dated March 6, 1945, for $18,000 (Exhibit 40)	48	40
40B	Eatsum check No. 3206, dated March 28, 1945, in the amount of $15,000, payable to cash	49	41
40C	Eatsum cash authorization slip, dated March 28, 1945, for $15,000 (Exhibit 40B)	51	42
40D	Eatsum check No. 3661, dated May 3, 1945, in the amount of $22,134.13, payable to cash	52	43
40E	Eatsum record of shipments received from Shotwell during the period April 4 to April 14, 1945	54	44
43	Eatsum check No. 3665 dated May 3, 1945 in the amount of $2,403, payable to cash	55	45
45	Eatsum check No. 3752, dated May 9, 1945, in the amount of $6,459.75, payable to cash	57	46
48	Eatsum check No. 3936, dated May 25, 1945, in the amount of $4,455, payable to cash	59	47
55	Eatsum check No. 3937, dated May 25, 1945, in the amount of $20,000, payable to cash	61	48

		Original	Print
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55B	Eatsum recap sheet re money due Shotwell for overages	64	50
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63	Manufacturers Trust Company ledger sheet reflecting Eatsum account during November, 1945; reflects payment, on November 27, of check for $36,148.35	66	52
63A	Eatsum recap sheet, dated November 27, 1945, showing a balance of $36,148.35 due Shotwell for overages	68	54
63B	Memorandum, in Huebner's handwriting, showing candy shipped to Eatsum during October & November, 1945	69	55
73	Photostat of General Confections check No. 149, dated March 29, 1946, in the amount of $35,536, payable to cash	70	56
73A	General Confections recap sheet dated March 27, 1946 re money due Shotwell for overages on candy shipped to Eatsum partnership	72	57
92	General Confections check No. 396, dated April 29, 1946, in the amount of $2,300, payable to cash	73	58
93	General Confections check No. 474, dated May 2, 1946, in the amount of $2,300, payable to cash	75	59
94	Photostat of record sheet with entries, dated May 18, 1946, made by Hankermyer re payments to Urban and Huebner, and memorandum, dated June 17, 1946, made by Lubben re uninvoiced purchase from Shotwell	77	60
95	Photostat of record sheet, dated March 28, 1946, re overages paid to Shotwell	79	61
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		Original	Print
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102	Record sheet, May, 1946, re overages paid to Huebner and Krause for shipments by Shotwell prior to May 15, 1946	85	67
112	Photostat of General Confections record sheet showing cost of shipments of candy received from Shotwell during the period June 18 to July 9, 1946	86	68
120	Photostat of General Confections record sheet re overages on shipments made between July 22 and August 14, 1946	87	69
122	General Confections check No. 14, dated October 12, 1946, in the amount of $12,235, payable to cash	88	70
122A	General Confections recap sheet, showing overages due for candy shipments made by Shotwell on September 11 and September 24, 1946	90	71
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124A	General Confections cash disbursement slip, dated November 7, 1946, for $2,323.50	93	74
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155	Bill of Lading, dated 1946, for shipment of 335 fibre cases of candy from Shotwell to General Confections, New York	110	87
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		Original	Print
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		Original	Print
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		Original	Print
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DEFENDANTS' EXHIBITS

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		Original	Print
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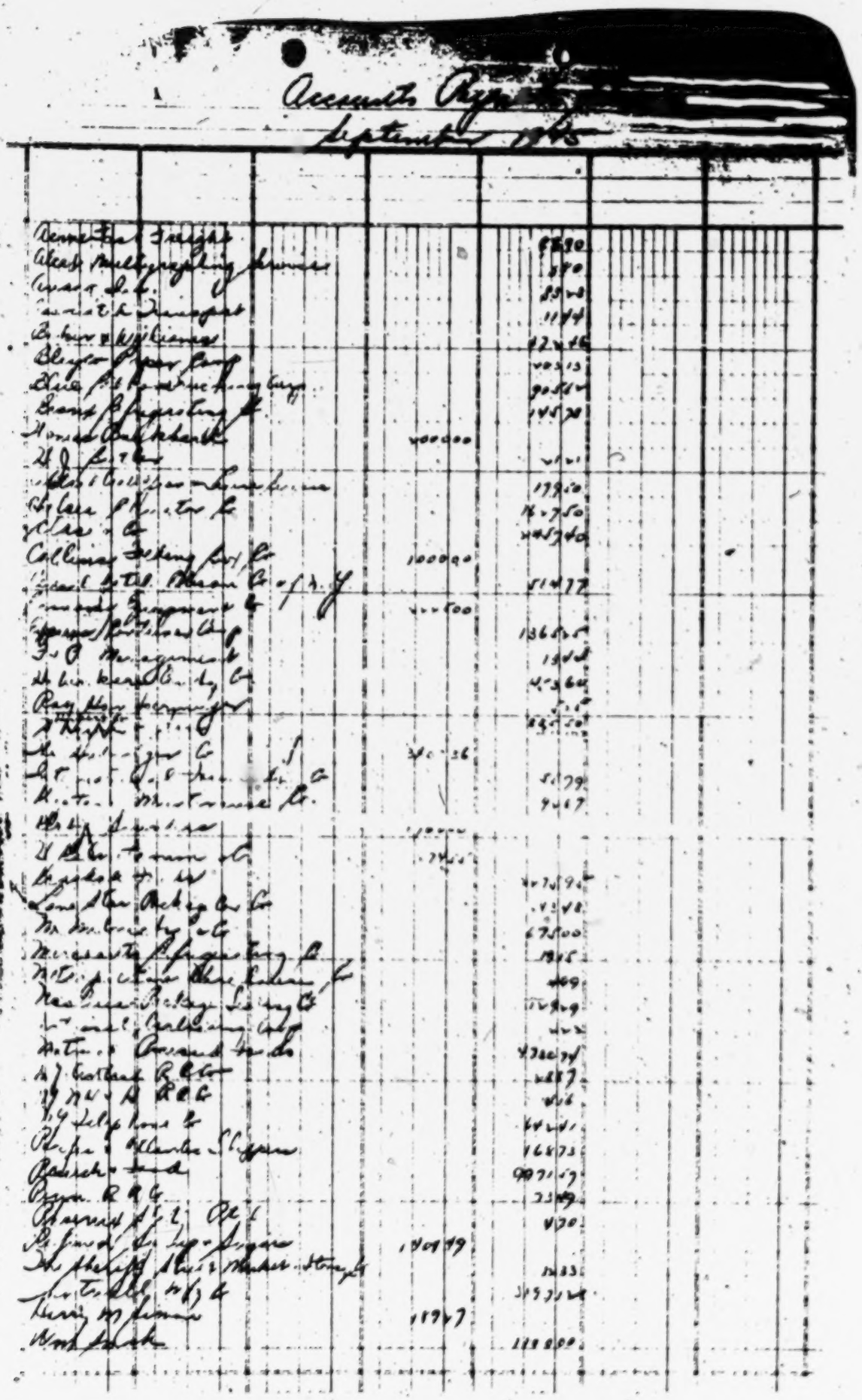
81	Penick & Ford memorandum showing Corn unloadings to account of General Confections, June 26 to July 28, 1946	537	472
82	Summary of Corn Syrup invoices rendered to Shotwell by Penick & Ford, 1941 to 1947	541	476
83	Contract, dated February 8, 1946, between Cargill, Inc. and Penick & Ford for 1 car of corn; marked "Shotwell" in pencil	547	482

		Original	Print
84	Contract, dated February 7, 1946, between Cargill and Penick & Ford for 5 cars of corn; marked "Shotwell" in pencil	549	483
85	Contract, dated February 6, 1946, between Daniel F. Rice & Co. and Penick & Ford for 1 car of corn; marked "Shotwell" in pencil	551	484
86	Contract, dated February 4, 1946, between Cargill and Penick & Ford for 7 cars of corn; marked "Shotwell" in pencil	553	485
87	Contract, dated February 2, 1946, between Daniel F. Rice & Co. and Penick & Ford for 1 car of corn; marked "Shotwell" in pencil	555	486
88	Certified copy of letter, dated May 1, 1946, from Chester Bowles to Will Clayton, Assistant Secretary of State	557	487
89	Certified copy of memorandum, dated May 2, 1946, from Robert H. Shields to Secretary of Agriculture	560	490
90	Certified copy of page 3 of Weekly Highlight Report No. 26 dated April 4, 1946, from Robert Marks, Chief, Regional Food Enforcement Section, Chicago, Illinois, to Herman Greenberg, Director, Food Enforcement Division, Washington, D. C.	565	496
91	Certified copy of "Report on Economic Effects of Grain Exchange Actions Affecting Futures Trading during the first six months of 1946" entered by the Federal Trade Commission February 4, 1947	567	498
93	Certified copy of appointment, December 19, 1952, of Harold E. Sullivan as Master in Chancery, Circuit Court of Cook County	660	592
94	Letter, dated September 7, 1950, from Sullivan to James B. McCahey	664	596
95	Letter, dated September 30, 1953, from R. B. Shipley, Director, Passport Office, Department of State to Alan Y. Cole re certain information from passport file of David George Lubben	666	598

		Original	Print
95A-B	Photostat of passport application, dated August 3, 1948, of David George Lubben	668	600
96	Treasury Department Mimeograph entitled "Revision of Address by J. P. Wenchel entitled 'Tax Frauds and Voluntary Disclosures.'"	670	602
97	Photostat of memorandum dated May 2, 1947, to officers and employees of the Internal Revenue Service, calling their attention to address to be given by J. P. Wenchel on May 24, 1947	682	620
98	Certified copy of Com. Mimeograph Coll. No. 4201, R. A. No. 722, dated July 2, 1934, re voluntary disclosure policy	684	621
99A-C	Subpoenas duces tecum directed to Penick & Ford, American Maize, Corn Products Refining and Hubinger	696	637
100A-B	Summary of Shotwell Corn Syrup Purchases from Union Sales Corp., 1941	705	649
100C	Summary of Shotwell Corn Syrup Purchases from A. E. Staley Mfg. Co., 1941	709	651
100D	Summary of Shotwell Corn Syrup Purchases from Penick & Ford, 1941	711	652
100E	Summary of Shotwell Corn Syrup Purchases from Corn Products Sales Co., 1941	713	653
100F	Summary of Shotwell Corn Syrup Purchases from Anheuser-Busch, 1941	715	654
100G	Summary of Shotwell Corn Syrup Purchases from American Maize Products Co., 1941	717	655
100H	Recapitulation of Shotwell Corn Syrup Purchases, 1941	719	656
100I	Summary of Shotwell Starch Purchases from A. E. Staley Mfg. Co., 1941	721	657
100J-K	Summary of Shotwell Starch Purchases from Corn Products Sales Co., 1941	723	658
100L	Summary of Shotwell Starch Purchases from Certified Products Co., 1941	727	660
100M	Summary of Shotwell Starch Purchases from American Maize Products Co., 1941	729	661

		Original	Print
102	Summary of Shotwell Corn Syrup Purchases, 1941, 1945, 1946	731	662
103	Summary of Shotwell Corn Sugar Purchases, 1941, 1945, 1946	733	663
104	Summary of Shotwell boiling starch purchases, 1941, 1945, 1946	734	664
105	Summary of Shotwell Moulding Starch Purchases, 1941, 1945, 1946	736	665
106	Summary of Shotwell Purchases of Corn Products, 1941, 1945, 1946	738	666
107	Summary of Shotwell Purchases of Corn Syrup from American Maize, Corn Products, and Penick & Ford, 1941	740	667
108	Summary of Shotwell Corn Syrup Purchases, 1945, 1946	741	668



Defendants' Exhibit 65A

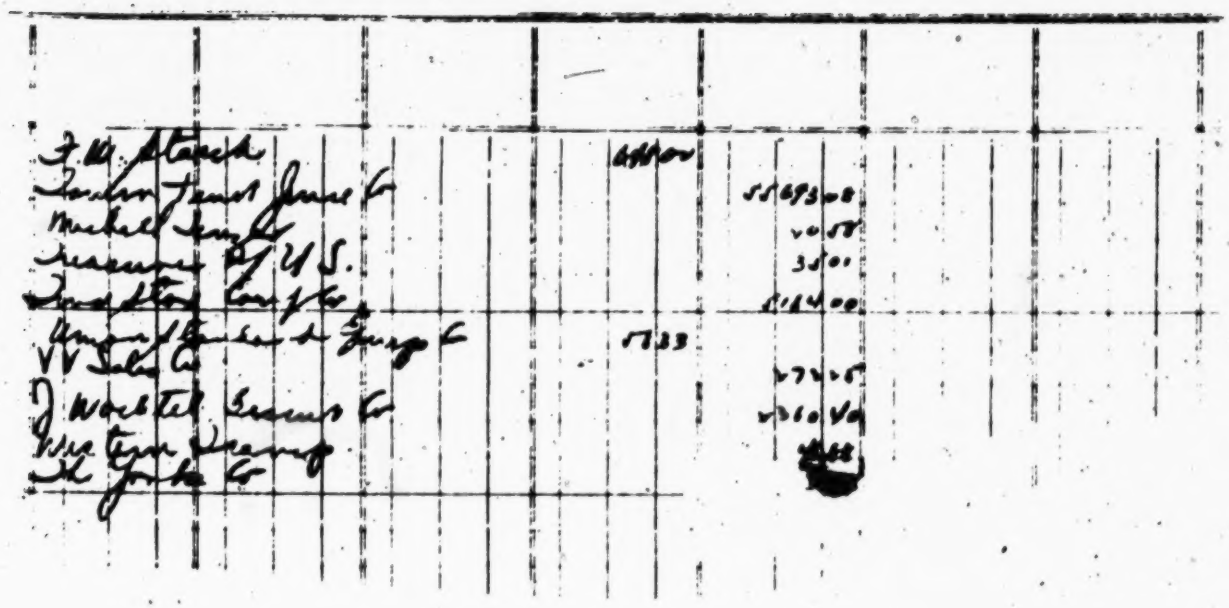
[Col. 393]

Accounts Payable
September 1945

Armentrout Freight		88.90
Alcad Multigraphing Service		5.40
[illegible]		85.28
[illegible] Transport		11.44
[illegible] & Williams		172.46
Bleyer Paper Corp		403.13
[illegible]		905.64
[illegible] Refrigerating Co		145.78
[illegible]	400.00	
[illegible]		21.21
[illegible]		179.50
[illegible] Co		167.50
[illegible] Co		245.40
Collins Fishing Box Co	100.00	
[illegible] Co of N.Y.		514.77
[illegible] Equipment Co	222.00	
[illegible] Corp		1365.25
[illegible] Management		13.48
[illegible] Co		453.60
[illegible]		[illegible]
[illegible]		235.50
[illegible] Co	340.36	
[illegible] Co		51.79
[illegible] Co		94.67
[illegible]	100.00	
[illegible] Co	274.55	
[illegible]		2275.95
Lone Star Packing Co Co		243.48
[illegible] Co		675.00
Mercantile Refrigerating Co		18.15
[illegible] Co		4.09
[illegible] Packing Co		129.29
[illegible] Corp		4.22
[illegible]		4720.74
[illegible] R.R. Co		28.87
[illegible] R.R. Co		4.16
[illegible] Co		642.41
[illegible] Shippers		168.73
[illegible]		9971.57
[illegible] R.R. Co		23.49
[illegible]		4.70
[illegible] Sugars	1401.49	
[illegible] Market Storage Co		12.33
[illegible] Co		3197.12
[illegible]	189.27	
[illegible]		1180.00

[fol. 394]

DEFENDANTS' EXHIBIT 65B



Accounts Payable Schedule
October 1905

Acme Fast Freight		6946
Alert Mutoscope & Supply Co		9[illegible]
American Tobacco Products	15845	
Aaron Lumber Co		1890
Baker & Williams		19388
Blue Ribbon Trucking Co		3898
Brady Manufacturing Co		4[illegible]
Brandt Paper Co		11500
Brown Furniture Co		6[illegible]
Harmon Supply Co	2[illegible]	
Berry Grocer Co		576
A. J. Carter & Co		[illegible]57
Wm. A. Cooper & Co	48[illegible]	
Candida Chem		257
Central Coal & Iron Co		16[illegible]
Clark & Co		409[illegible]
McGlen	4[illegible]	
Collins Building Co	100000	
Commercial Trading Co	450000	
Consolidated Electric Co		64600
Dutchman Brewing Co		60000
Eagle Carbon Co		49080
Economy Equipment Co	4[illegible]	
J. O. Montgomery		7378
Greendale Chemical		6[illegible]
Home Products		6[illegible]
Independent Candy Co		1[illegible]
The Kleiber Co		18[illegible]
A. Light & Son	38[illegible]	
Eastern Candy Co		4[illegible]
International Harvesting Co		81[illegible]
Keystone Manufacturing		3[illegible]
Kirby Lumber Co	176000	
A. Klumpp & Co	12000	
Adams Express Co		[illegible]
Louisville & Nashville R.R.		16[illegible]
M. Schwartz & Co		6[illegible]
Manhattan Engineering Co		6383
Merchants & Miners Transportation		2693
Motor Transport Co		67[illegible]
Nat. Manufacturing Co		[illegible]
Chester Northern		7[illegible]
J. D. McClintock Trucking Co		174 34
Nashua Package Printing Co		4040
National Co		[illegible]
National Cereal Products		3[illegible]

Feb 1905
DEFENDANTS' EXHIBIT 650

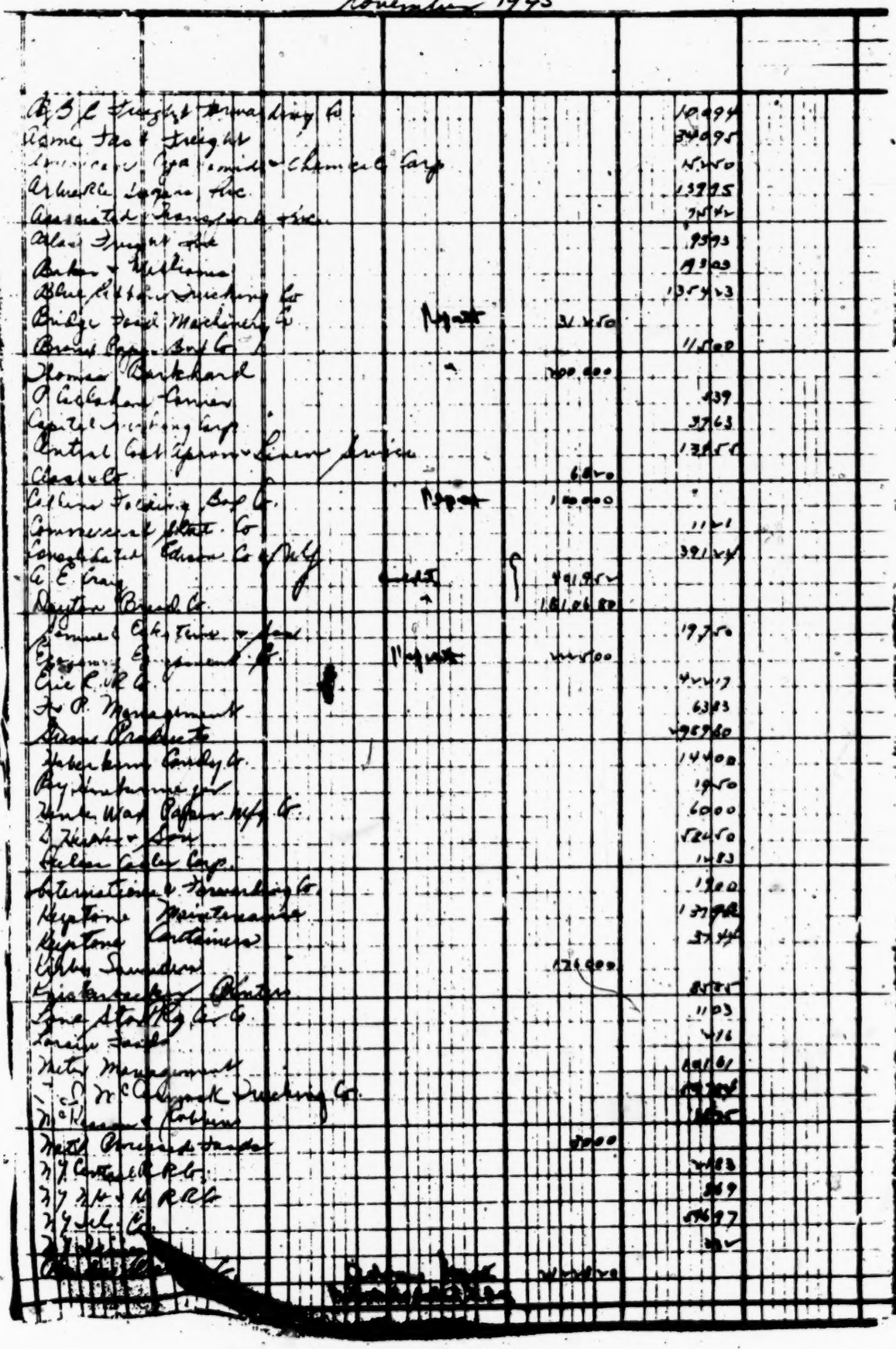
2 2CR143

Accounts Payable Schedule
October 1945

Newark Steel Drum Co		1394 75
~~N.Y. [illegible]~~		~~[illegible]~~
N.Y. N.H. & H. R.R. Co		8
N.Y. Telephone Co		732 05
N.Y. Times		33
Pacific & Atlantic Shippers		581
Penick & Ford	1367894	
Penn R.R. Co		55
Phoenix St. Ky. & Pty.		22 92
S. Price		1044 48
Producers Warehouse		2897
~~[illegible]~~		~~[illegible]~~
Republic Continental Corp.		171 07
Sheriff St. Market & Storage Co		12 [illegible]
Wm. H. Smoke		110 00
~~[illegible]~~		~~[illegible]~~
Standard Equip. Co		3 95
T.W. Starch	648 00	
Tavern Quiet Juice Co		2180 98
McTenger		40 62
Two Star Cap Co		1254 00
Tyson Theatre Ticket Service		129 10
Union Standard Equip Co	58 83	
United Air Lines	3 33	
Universal Folding Box Co		1249 13
V.V. Sales Co		1567 34
J. Wachtel Bessmer		1464 00
West Disinfecting Co	9 10	
Western Trump		133 07
Rudie Wilhelm		6 10
Wm. H. Selich		4 29
The Yorke Co		8 50
	37097 10	79365 06
		37097 10
		44267 96
		44237 56
		30 50

Accounts Payable Schedule

November 1945



52CR143

65F

Penick & Ford	3434.69	
Penn. R R Co		12443
Chemical Stoly & Dry Co		606
Phatt & Co	32.50	
Pen Ames Corp Co		20
Republic Container Corp		16741
Shotwell Mfg Co		4282.03
Sunnilla Fgr Lines		2374
F. V. Starch	64800	
Ingraham Corp Co		18500
Tyson Electric Vickers Service		36085
Union Standard Equip Co	5530	
United Air Lines		11255
Universal Field Corp Co		191688
V. V. Sales Co		37612
John Vogel Inc		385
Westinghouse Electric Supply Co		849
Westrans Co		1085
The Yorkels		650
	55413.74	55319.24
		55413.74
		105.50
		75.50
		30

[fol. 399]

DEFENDANTS' EXHIBIT 65J

Eatsum Food Products Co
May 31, 1945
Notes on Purchases

(5) (a) Comments
To facilitate the Vouching of the purchase book, besides putting the page no. on the bill I would suggest that the line # should also be recorded underneath the page # 54. (N/T)

In Vouching the bills, I came across certain credits given us by Close Co for the use of our cans on drop sales. These credits were not taken into consideration by the bookkeeper and they only entered the net amount. This procedure is not correct because it throws the net profit of that account out of gear. Upon further investigation I was informed that $ 30000 of cans were purchased and approximately $ 20000 were billed out in this manner at the present time. I further discovered that the purchase of these cans were charged to the drop shipments account. This method is incorrect unless for statement purposes the inventory of the cans were taken out of this account.

May 4, 1945, Gratz Dist. Co charged us for drop shipments to Rose 5, 10, 25 Stores in Hamlet in the amount of 8055 ~~on~~ further investigation I found that this shipment was not billed out to the above because they never received the mdse. The shipment is being traced to its destination to find out who received the mdse. so they can be billed.

On the same bill we are charged with 6834 for drop shipment to S.H. Kress in Ohio. Kress was not billed in May because this store was omitted from the statement. The amount was billed on June 8, 1945 # 26837.

(5) (b) In many instances prices on invoices are changed and the amount added to the bill. The bills are paid in two checks one check equals the amount billed us less the discount and one check made payable to cash for the increase in the price.

The method of paying these increases are always the same with two checks but the handling of the increase on the bills are different. In one case it is done as mentioned above and in other instances new bills are typed on yellow stationery reflecting the changes.

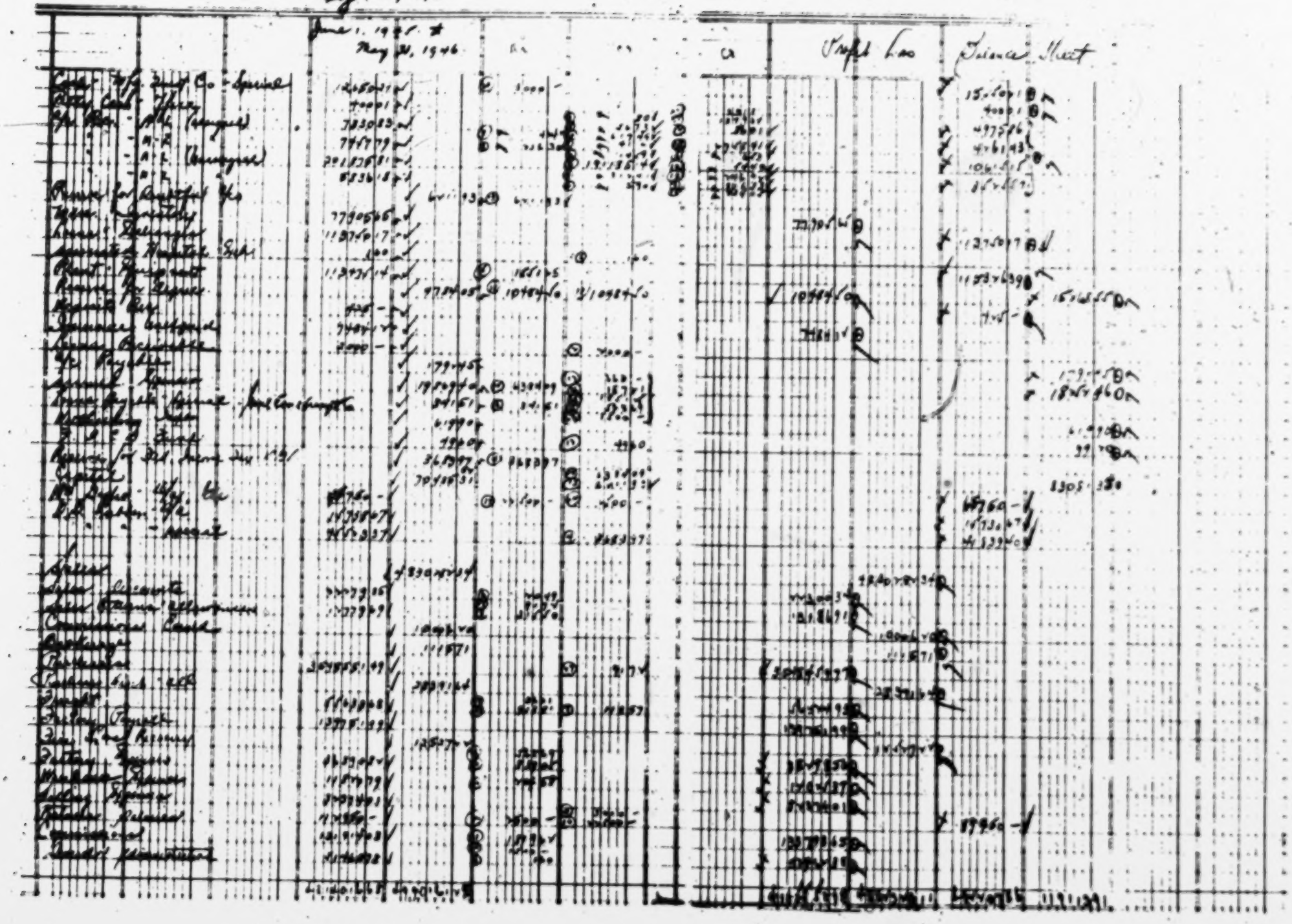
I think that this procedure should be made uniform, that is have a new bill typed with the prices actually paid and have the bill signed, approved by an authorized official. In this manner we can touch the bills with some degree of certainty that the increase in prices have been seen and approved.

The Bills rendered by Bernard Berry Co for April May were for 1000 per month. This seems to be an increase over the previous bills rendered of 750 per month. The bills were entered in June 1945 and charged to Acctg. fees.

[fol. 400]

DEFENDANTS' EXHIBIT 65K

Eatmore Food Products
Working Papers
May 31, 1946



[fol. 401]

DEFENDANTS' EXHIBIT 65N

Columbia Steel Co.
May 31, 1945
Notes to Purchases

Summary

(1) (L) Bill dated 5/8 from Pitts. Steel Co. inadvertently charged to Drop Shipments Entry Mdse. 11 00 — To Drop Shipments 11 00

(M) Bill dated 5/11/45 for 3 Pcs from Pittsburg Drop Forge Co. was charged to Warehouse Mdse instead of drop Shipments Entry Mdse. 19 80 — To Drop Ships. 19 80

(N) Bill from W.R. Ingersoll Mfg Co. for 27 96 Charged to Equipment. Was to Machinery Entry Factory Purchases 27 96 — To Equipment 27 96

(O) Bill dated 5/19/45 from Jas. E. Gates Co. for 77 08 was incorrectly charged to Supplies. Entry Charges 47 50. Hauling 29 58. — To Supplies 77 08

(P) The following bills to be accrued as of May entered in June Purchases.

5/27	Clark Co	66	
5/24	"	1970	
5/26	"	660	
5/31	"	99	
5/11	Allen Tool Steel Co	1970	Allen To Steel 5/9/45 Inv # 26 71
5/11	"	1950	26 71
5/11	"	1950	26 71
5/21	"	1645	26 71
5/11	"	1970	26 71
5/11	"	66	26 71
5/11	"	1970	26 71
5/11	"	1950	26 71
5/11	"	1950	26 71
5/11	"	1950	26 71
5/11	"	99	26 71
5/19	Clark Co	1955	27 [illegible] (Inv 27 [illegible])
5/31	Merchants Mfg Co	495	entered in June
5/31	"	495	
5/31	Pacific Intermountain Express Co.	1959	
5/31	"	1950	

(Q) (1) Bill from Pittsburgh Steel Co. 10 00 Credit in June

(2) Bill from Pittsburgh Steel Co. 14 91

(3) Agent Bills Entered in May See supporting Work Sheets

(4) Unentered Bills

5/10/45	A.B.C. Freight		18 60
5/13	Acme Fast Freight		5 00
5/15	"		5 00
5/17	Pacific Fast Freight		90 94
5/18	"		5 00
5/24	"		61 51
5/1-5/8	Blue Ribbon Trucking		15 00
5/1-5/15	"		15 00
5/15-5/22	"		15 00
5/15-5/31	"		15 00

June 1 Bill to be Purchased on May Statement 30 00

5/1-5/31	Blue Ribbon		30 00
5/1-5/31	"		50 00
5/1-5/30	"		93 00
5/1-5/30	"		90 00
5/19	Grand Rapids Storage Co		90 00
5/20	"		90 00
5/20	"		5 00
5/27	"		13 00
5/29	"		5 00
5/31	"		13 00
5/1	Intermountain Express Co.		6 00
5/1	Pittsburgh Valley RR Co		50 00
5/14	"		77 00

Defendants' Exhibit 65P

65-P

Ottawa Food Products Co

May 31, 1945

Notes on Purchases

(1)

(1a) Economy Baler Co, dated 4/30 extended to balance covering allowance on 194 invoice of $2.50, charged to the equipment acct. This entry balanced the split as follows:-

Equipment — No -
Sales Ledger — No

(2a) A.B.C. Freight bill dated 4/30/45 in the amount of $158.60 was paid although not authorized by any organization.

(3a) Acme Fast Freight bills dated 4/3 for $65 and 4/5 for $105 were not signed for payment.

(4a) In order to facilitate the handling of bills for purchases (book), I suggest pending the page numbers for the ledger, I should also suggest that the same procedure should also be provided on the bill just underneath the page number, Stamp (2)

(5a) The following bills have not been signed.

4/7	Pierce Fast Freight		90.94
4/9	"		50.94
3/24			61.81
4/1 - 4/15	Blue Ribbon Trucking Co		154.50
4/16 - 4/30	"		157.50
4/30 - 4/4	"		155.00

✓ Signed 30 bills for $3090 showed have been accrued on last months statement.

4/2 - 4/15	Quality Trucking Co	154.50

✓ Signed 30 bills for $3090 to be paid as per May statement

4/1 - 4/15	Blue Ribbon Trucking Co	305.00
4/1 - 4/15	"	247.70
4/1 - 4/30	"	915.00

✓ Signed 30 bills for 993.00 showed have been accrued last month

4/1 - 4/30	Blue Ribbon Trucking Co	906.00

✓ Signed 30 bills for 906.00 showed have been accrued last month

Brewsters, Inc. 1 Co bill dated 5/10/45 Weight per bill 56 lbs received 567 lbs.

Brent Refrigerating Company bills not signed as follows:-

4/9	94.05	4/17	✓	135.00
4/14	94.05	4/1	✓	57.44
4/10	50.16	4/20	✓	137.63

✓ Signed 9 - 43 bills for $70.95 showed have been accrued last month

65-Q

52CR143

Eatsum Food Products Co.
May 31, 1945
Notes on Purchases

(2)

✓ H. J. Butler & Bros Inc bills were extended to the supplies acct. The bills are for lumber, nails etc. The amounts are as follows:-

4/19	70 30
4/28	20 40
4/28	37 69
Total	148 19

These bills should have been accrued last month.

(16) ✓ Close & Co. billed us on 5/17/45 for 119808
This figure is not as we were given credit for the use of our own cans. However, by this procedure the profit in the Drop Shipments account would be inflated by the amount of the credit. The proper recording should be made as follows:-

Drop Purchases	149760	
To A/c Payable		119808
(Cans account may be whichever)		29952

in this manner the accounts reflect their true condition.

1C ✓ We billed Walgreen Drug Stores at 5/17/45 # 25603 for $116.10 which is correct, however the amount to be extended to Drop Sales should have been 137 70
an allowance for adv. & promotion was given amounting to 21 60
leaving a balance due of 116 10
Correcting entry.

adv. & Promotion	21 60	
To Drop Sales		21 60

1C ✓ Same entry on 5/14/45 # 25443 as above 21 60
1C ✓ " " on 5/1/45 # 24918 as above 21 60

(5a) We were informed that $30000.- worth of cans were purchased under 20010 - were billed out in this manner up to the present time. Cans purchased were charged to the Drop acct. which is incorrect unless the inventory of cans at the time of the statement was credited against this account.

12 ✓ Close & Co # 5382 5/2/45 credit given us for cans amounted to 2208. That amount of 88 34
Charged to Drop Purchases instead of 5104.

[fol. 403]

DEFENDANTS' EXHIBIT 65Q

S 7CR143

Eatsum Food Products Co
May 31, 1945
Notes on Purchase

(3)

May 4 (12)	Walgreen Drug Stores	$ 24915	(To adjust)	
	advertising & Promotion		264 -	
	To Drug Sales			264 -
(12) 4	Walgreen Drug Stores	$ 24916		
	adjust as above			1680
(12) 4	Walgreen Drug Stores	$ 24917		
	adjust as above			2640
✓	Clone Co. bill dated 4/17		66 -	
	4/25		66 -	
	These bills should have been accrued last month.			
(17)	Bill dated 1/9/45 - Columbus Stat. Printers Co. Inc.			1667
	Charged to office equipment. These amount should be transferred to the Stat. Prtg. account.			
(19)	Bills for Continental office turn Co. Inc.			
	Charged to office equipment without eliminating the sales tax.			
	5/21	420 -	420	
	5/21	170 -	170	
		590 -	590	17590
	Entry to adjust			
	Sales tax		590	
	To office Equip.			590
(14)	Bill for Continental office turn Co. Inc. 5/8 tax			500
	Charged to Equipment. These amount should be transferred to office expense account.			
✓	Expense account of David Lahlen for Week ending 4/28/45 in the amount of $37.80 should have been accrued last month.			

65-S

2CR143

Calsum Food Products Co (a)
May 31, 1945
Notes on Purchases

Bill dated May 4, 1945 from Gertz Dept. Co.

(5a) We are charged with amount of 1015
for shipment to Roses 5, 10, 25 Stores in Hamlet. This
drug sales has not been billed as yet because
it did not go to Roses stores and is being traced
to its destination that it can be billed to the
proper account.

(5a) On the same bill we are charged with 6534
for shipment to S.H. Kress Co. Chas. Kress was
not billed in May because this item was omitted
from Gertz's statement. This amount was billed
on June 8, 1945 $ 26839

✓ Bill dated 1/3 from Independent Warehouse Inc
in amount of $1668 should have been accrued
last month.

(4a) Bill May 21 International Forwarding Co
for 6269 not signed.

(4a) Bill May 11 Lehigh Valley RR Co
for 10913 not signed

(4a) Bill May 12 Lehigh Valley RR Co
for 77157 not signed.

✓ (3) Bills 4/27/45 R.I. RR Co Totaling 231
should have been accrued last month.

✓ Bill dated 4/17 from [illegible]
for 7640 should have been accrued last
month.

✓ Bill dated 4/27/45 from Nashua Package Sealing Co
for 4348 should have been accrued last
month.

✓ Bill dated 2/1/45 from N.Y. Central for 1838
should have been accrued on February statement.

✓ Bills dated 4/30 & 4/28 from P.R.R. Co
for 500 & 831 should have been accrued
last month.

S2GP143

65-T

Calsum Food Products Co
May 31, 1945
Notes on Purchases

(6)

✓ Bills for United Air Lines Inc. dated
4/28 5089
4/29 1064
4/30 [illegible]
Should have been accrued last month.

(8a) Bernard Bercu & Co rendered bills for Exp't May @ 1000 each and entered as acctg fees that way. These bills were entered in June Purchased.

(11) Bill from G V Clark dated 5/15/45 # 6122 was charged to whole. mdse. instead of Drop Ship. The reason given being that the mdse billed to Burns Biscuit Corp. on 5/18/45 # 15706 was analyzed incorrectly and instead of changing the sales analysis, the invoice was charged to mdse. Thus thereby our net profit for drop sales out by the difference as follows:-

Billed to Burns	801 95
Charged by G V Clark	575 75
Diff	226 40

(12a) Accrue the following: (recorded in June)

5/12	Clove & Co		66 -
5/24	" "		2970 -
4/25	" "		660 -
5/31	" "		99 -
5/31	" "	(Billed 6/6/45 (26717)	5940
5/31	" "	" " (26714)	15840
5/31	" "	" " (26713)	1980
5/31	" "	" " (26718)	1980
5/31	" "	" " (26724)	165 -
5/31	" "	" " (26710)	44550
5/31	" "	" " (26711)	66 -
5/31	" "	" " (26721)	2970
5/31	" "	" " (26720)	15240
5/31	" "	" " (26716)	1980
5/31	" "	" " (26714)	3840
5/31	" "	" " (26715)	91 -

Eatsum Food Products Co
May 31, 1945
Notes on Purchases

(7)

(1K) Bill from Close & Co 5/20/45 charges 96 -
to drop shipment acct. This amt. is net. We
are credited for use of our cans for 24 -. The
amt to be charged to drop ship shared be 120 -
and credit 24 - to can acct.

(1K) Close & Co 5/25 same as above
" 5/25 " " "
" 5/26 Shared be 72 -
Recorded 5760
Credit can a/c 1440

(1K) Close & Co 5/26 same
" " 5/26 Shared be 120 -
Recorded 96 -
Credit can a/c 24 -

(1K) Close & Co 5/26 Shared be 1920
Recorded 1536
Credit can a/c 384

(1L) Gertz dist Co bill dated 5/18 charged to
drop shipment 122265
Shared be 121143
Chge made 1122

(1L) Gertz Dist Co bill dated 5/29 (billed in June) 108636
Billed 6/9 (26754, 26754, 26755, 26745, 26746
26750, 26749, 26748, 26747, 26753
26744, 26751, 26742, 26742)

✓ Bill from Hotel Sherman 4/1/45 for 1652
Shared have been accrued last month

✓ Bill from Hold Haulage Corp 3/31/45 for 18 -
Shared have been accrued in [illegible]

(1M) Bill from LeRoy Imp Co dated 5/11/45 $342 was charged
to Warehouse [illegible] instead of drop ship. Invoice
$2619 incorrectly extended to Warehouse sales [illegible]
Thereby over net profit for drop sales cut by the difference
Billed to Burry 1525.20
Charged by LeRoy 1374.75
Diff 1430.5

3 2 4 R 143

65-V

Eastern Food Products Co
May 31, 1945
Notes on Purchases

(8)

(1a) Issues the following (Entered in June)

5/31	Merchants Refrigerating Co	614
5/31	" "	444
5/10	Pacific Atlantic	399
5/29	Belton R R Co	318
5/11	"	760
5/11	"	317
5/23	The Stetson Mfg Co	491610
5/11	Western Trans Co Inc	1471

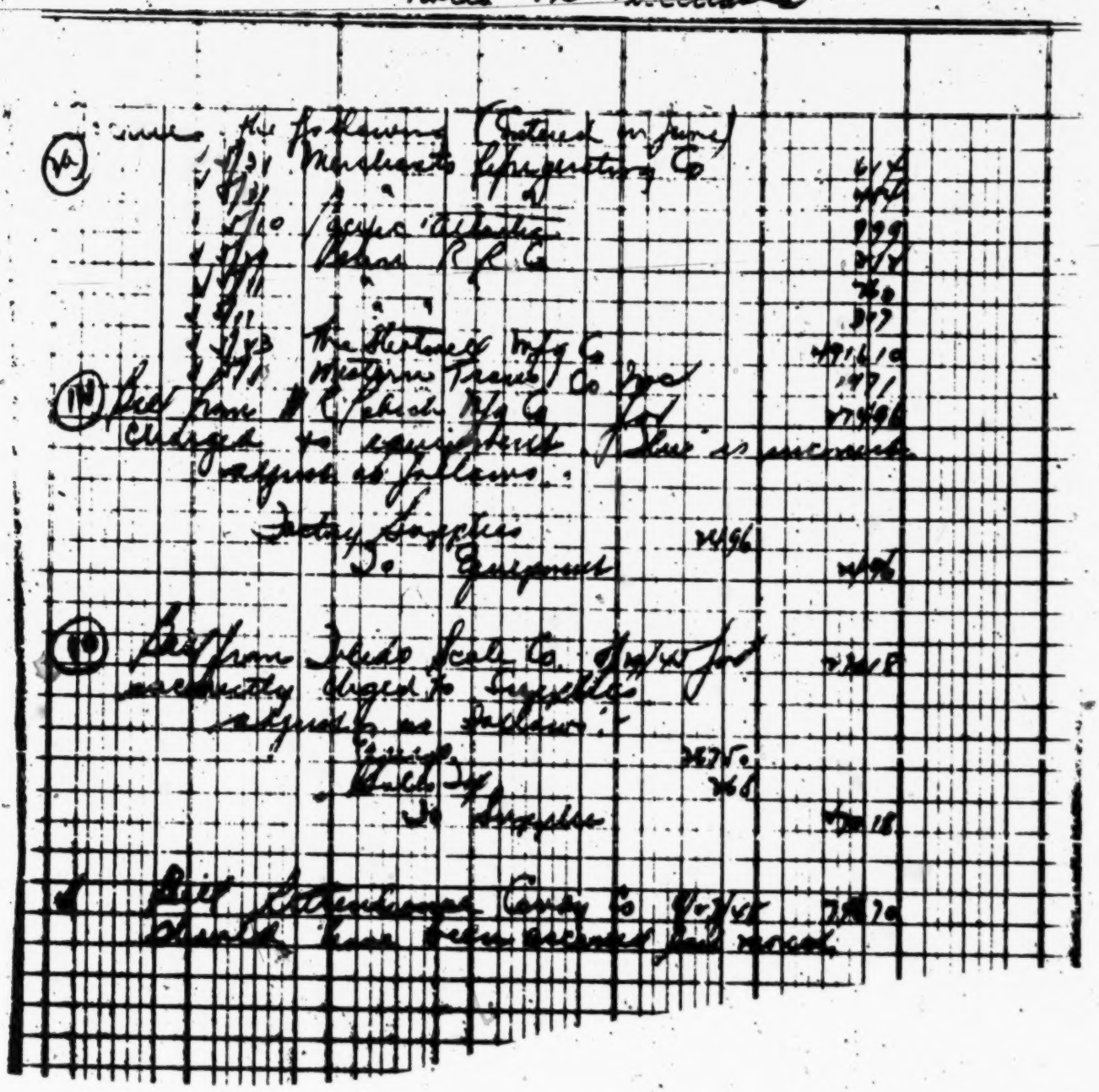
(1b) Bill from M R Pabich Mfg Co for 27496
Charged to equipment. This is incorrect
adjust as follows:

Factory Supplies	24496	
To Equipment		24496

(1c) Bill from Toledo Scale Co. 5/29/45 for 27418
incorrectly charged to Supplies
adjust as follows:

Equip.	26750	
Bulb Tax	268	
To Supplies		27018

(1d) Bill Rittenhouse Candy Co 4/27/45 7870
should have been accrued for month.



[fol. 409]

DEFENDANTS' EXHIBIT 65W

Tetsum Food Products
Notes on Purchases
July 1945

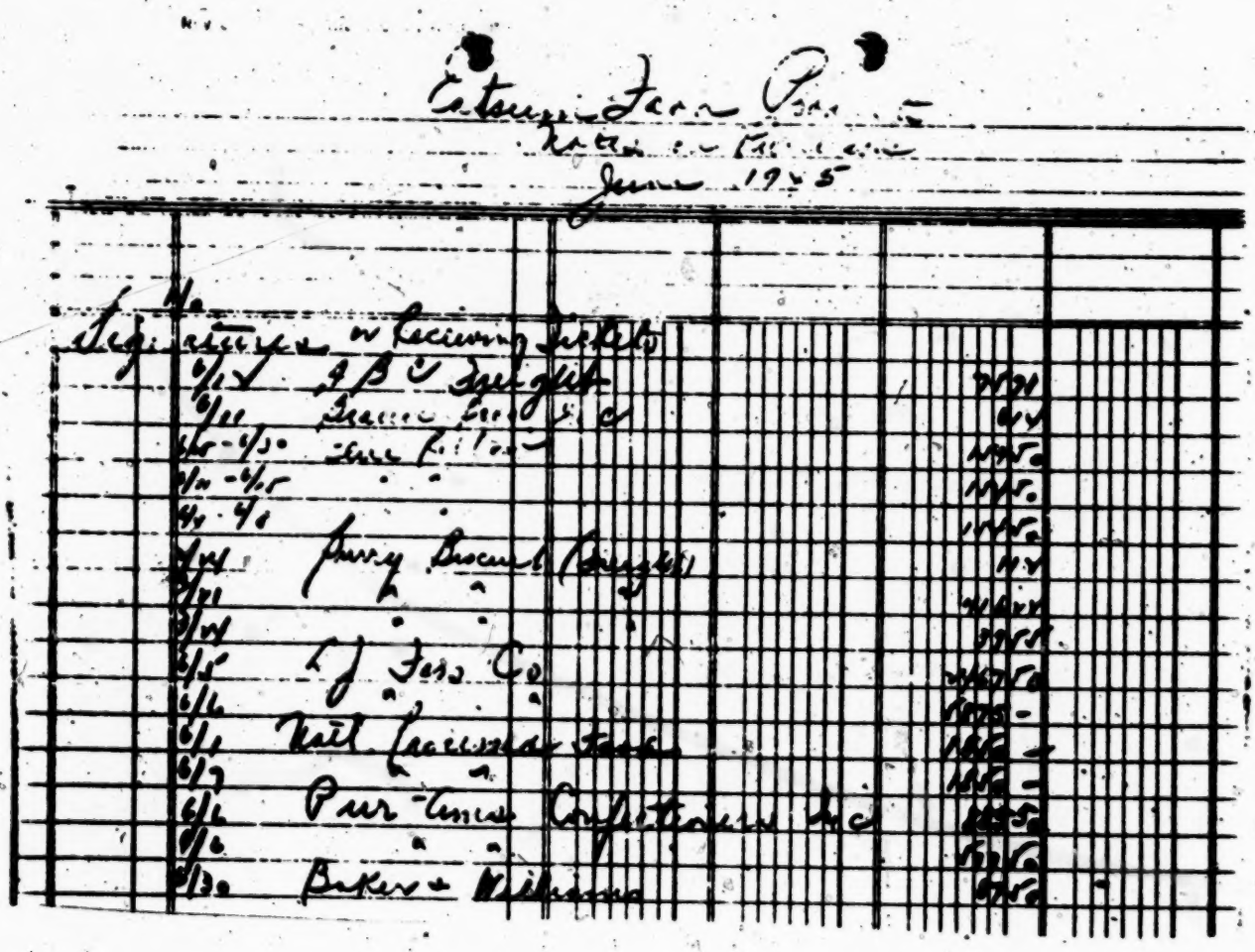
The following bills can not be located or not available for examination:

Page 12	6/28	Pur Ams	2117 50	Mr. Lubbers
14	7/10	Penn RR	4 89	?
16	7/18	Pur Ams	770 –	Mr. Lubbers
17	7/23	Nat'l Processed Co.	925 –	?
	7/24	Pur Ams	885 50	Mr. Lubbers
	7/23	Chas. Goetz	150 –	?
20	7/20	Claude Jones	7503 75	No bill for Carload of Planets Hoeb [illegible] [illegible] 7/23/45

[fol. 410]

DEFENDANTS' EXHIBIT 65X

65-X



[fol. 411]

DEFENDANTS' EXHIBIT 66A

Currency Account
Income

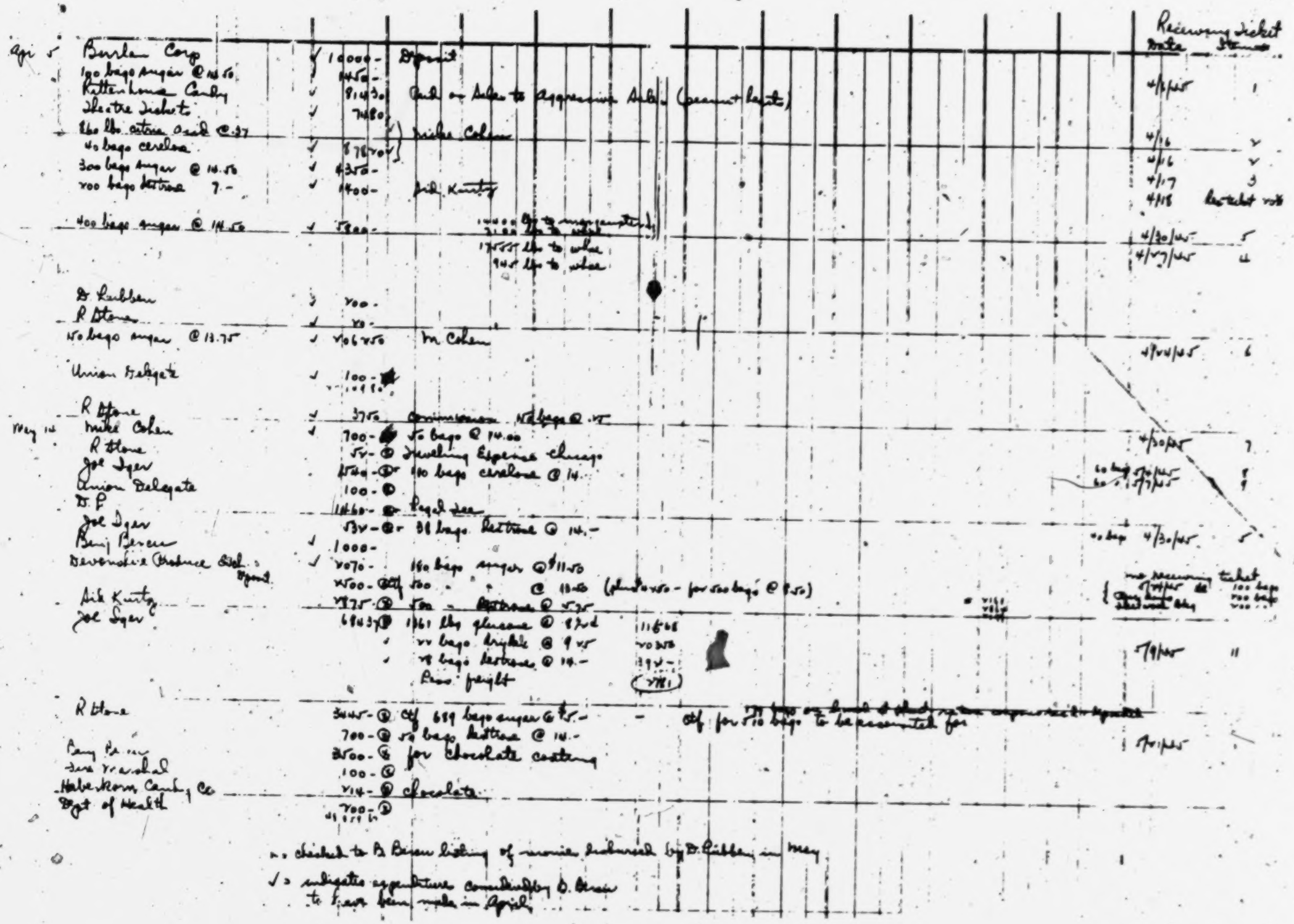
Date		Amount	Source	
Mar 31		540-	Leftover from one of Mr. Lubben's transactions	
		80-	Advance by Mr. Lubben	
		1097 13	Overage on [illegible] (Dexhone) sold to Volpit Chewing Gum Co.	
	Igar - raisins	2856 87		
	Exchange a/c	4300-		
	Two Star Confectionery	2634 66	Payments by D.L. to these vendors	
	Blue Ribbon Trucking (Dextrose)	4900-		
	Nitl Processed Foods	135		
	Mike Cohen	1691 25		
	Sinders Corrugated Box	200-		
	R Stone	483 00	Peanut hearts	
	Pur Ams	2400-	150 bags sugar @ 16.-	
	D.L.	112-	Profit on deal with Berty	
	D.L.	235 84	" " cocoa deal	
		2735 78		
	Pur Ams	3200-	200 bags sugar @ 16.-	
	Two Star Confectionery	4000-		
	R Stone	34704 48 / 1495 50	peanut hearts	
	Berty	4788-	cocoa	①
	D.L.	240- / 3975 48	profit on cocoa deal	①
	D Lubben	15000- / 5973 48		① Included in B. Berson analysis for May
May 17	Rubinson	5492-	1 carload candy	①
21	D Lubben	600-		①
21	J Wachtel	365 50	gumdrops	①
24	Rubinson	3000-	advance against [illegible]	①
24	Pur Ams	3150-	197 bags sugar @ 16.-	①
25	Joe Reiter	2368	6648 lb Dexhone @ 3 2/4	①
	TOTAL	70864 46		

[illegible] Receipt prior to 4/30
30957 20 Disbursements prior to 4/30
3746.96 Balance per B Berson 5/1/45

Currency Account

[fol. 413]

DEFENDANTS' EXHIBIT 66B



[fol. 414]

10,000.00
1,450.00
81430
7480
878.20
4,350.00
1,400.00
5,800.00
200.00
20.00
2,062.50
1,000.00
37.50
700.00
1,000.00
2,070.00
30,957.30

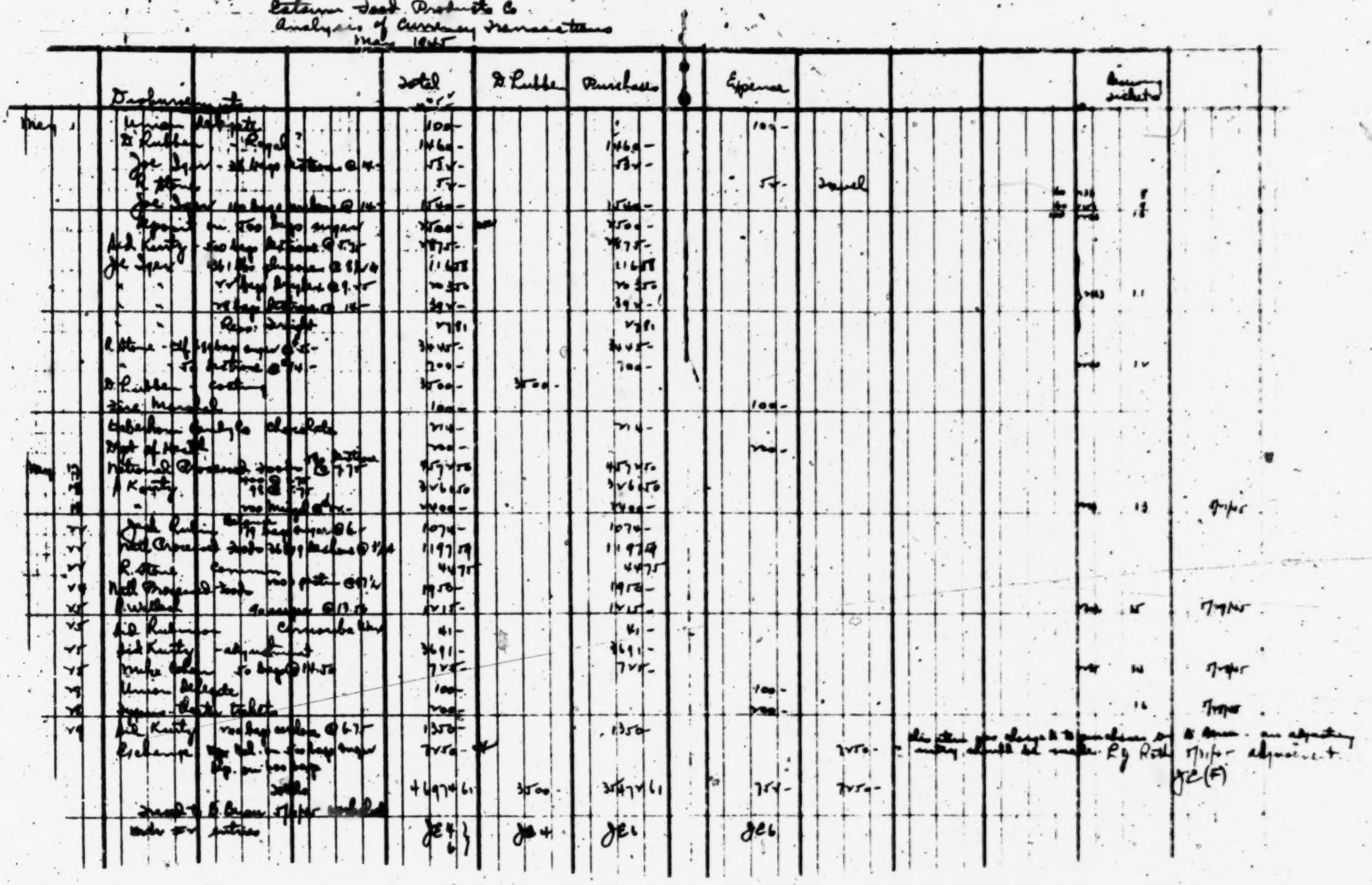
[fol. 415]

DEFENDANTS' EXHIBIT 66C

Eastern Food Products Co
Analysis of Currency Transactions
May 1945

	Disbursements	Total	D. Rubber	Purchases	Expense				Assuming tickets	
May 1	Union delegate	100-			100-					
	D. Rubber - Royal?	1460-		1460-						
	Joe Iger - 38 bags [illegible] @ 14-	532-		532-						
	R. Stone	52-			52-	Travel				
	Joe Iger 100 bags [illegible] @ 14-	1540-		1540-						
	Deposit on 500 bags sugar	2500-		2500-						
	Aid Kurtz - 500 bags [illegible] @ 5.75	2875-		2875-						
	Joe Iger 1361 lbs glucose @ 8½	116.58		116.58						
	" " 22 bags [illegible] @ 9.25	203.50		203.50						
	" " 28 bags [illegible] @ 14-	392-		392-						
	" " Rec. Freight	27.81		27.81						
	R. Stone - [illegible] bags sugar @ 5-	3445-		3445-						
	" - 50 [illegible] @ 14-	700-		700-						
	D. Rubber - coating	3500-	3500-							
	Fire Marshal	100-			100-					
	Haberhorn Candy Co chocolate	214-		214-						
	Dept of Health	200-			200-					
May 17	National Processed Foods 100 [illegible] @ 7.75	4572.50		4572.50						
18	Aid Kurtz 400 @ 7.75 / 98 @ 7.75	3261.50		3261.50						
18	" 200 [illegible] @ [illegible]	2400-		2400-						
22	Jack Rubin [illegible] 179 bags sugar @ 6-	1074-		1074-						
22	Natl Processed Foods 36 [illegible] @ 3¼	1197.59		1197.59						
22	R. Stone Common	44.75		44.75						
24	Natl Processed Foods 200 [illegible] @ 9½	1950-		1950-						
25	R. Wallach 90 sugar @ 13.50	1215-		1215-						
25	Aid Rubinson Cornoba Wax	41-		41-						
25	Aid Kurtz - adjustment	3691-		3691-						
25	Mike Cohen 50 bags @ 14.50	725-		725-						
29	Union delegate	100-			100-					
28	Dyspnea [illegible] tickets	200-			200-					
29	Aid Kurtz 200 bags [illegible] @ 6.75	1350-		1350-						
	Exchange [illegible] 500 bags sugar [illegible] 500 bags	7250-				7250-	[illegible]			
	Totals	46974.61	3500-	35472.61	754-	7250-				
	Traced to B. Bean [illegible]									
	[illegible] entries	JE 4 6	JE 4	JE 6	JE 6					

[illegible] adjusting entry should be made. R.J. Roth 5/31/45 adjustment JE(F)



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[fol. 417]

DEFENDANTS' EXHIBIT 66D

Catawba Food Products Co.
Currency a/c

May 1	Cash in bk & receipts subsequent to 7/1/45:		374698	374698
	D.L			15000 —
	D.L for D.L			4788 —
V1	D.L			600 —
	total			V413498 —
	Less:			
	May Drawings chargeable to D.L		3500 —	
			130348	
	total			133848
	Balance credited to D.L			76000
	Credit for D.L. Salary			VV50 —
	total credit to D.L			9850 —

[fol. 419]

DEFENDANTS' EXHIBIT 66E

S/S

Eatcum Food Products Co
Analysis of Currency Account

Balance - May 1, 1945						1303498
Additions:						
				419		

[fol. 421]

DEFENDANTS' EXHIBIT 66F

Catum Food Products Co
B. Bercu - Analysis of Currency Account
May, 1945

		Total	D. Lubber	Sales	Exchange
	Receipts				
May 1	Balance	374698	374698		
1	D. Lubber	15000-	15000-		
1	A. Gertz (a/c pay paid by D.L. in Jan. refunded to him & put into currency a/c by him)	4788-	4788-		
21	D. Lubber	600-	600-		
1	Cocoa Deal	240-		240-	
17	Rubinson 1 carload of candy	5493-		5493-	
21	J. Wachtel gumdrops	365250		365250	
24	Rubinson advance against [illegible]	3000-		3000-	
24	Our Amo 197 bags sugar @ 16.-	3154-		3154-	
25	Joe Reiter	23268		23268	
17	Exchange	7250-			7250-
	TOTAL	47155.16	24134.98	15770.18	7250-
			13034.98		

The above items were checked against B. Bercu's record of currency transactions and against the record of transactions for the period of April & May submitted by Miss Feldman

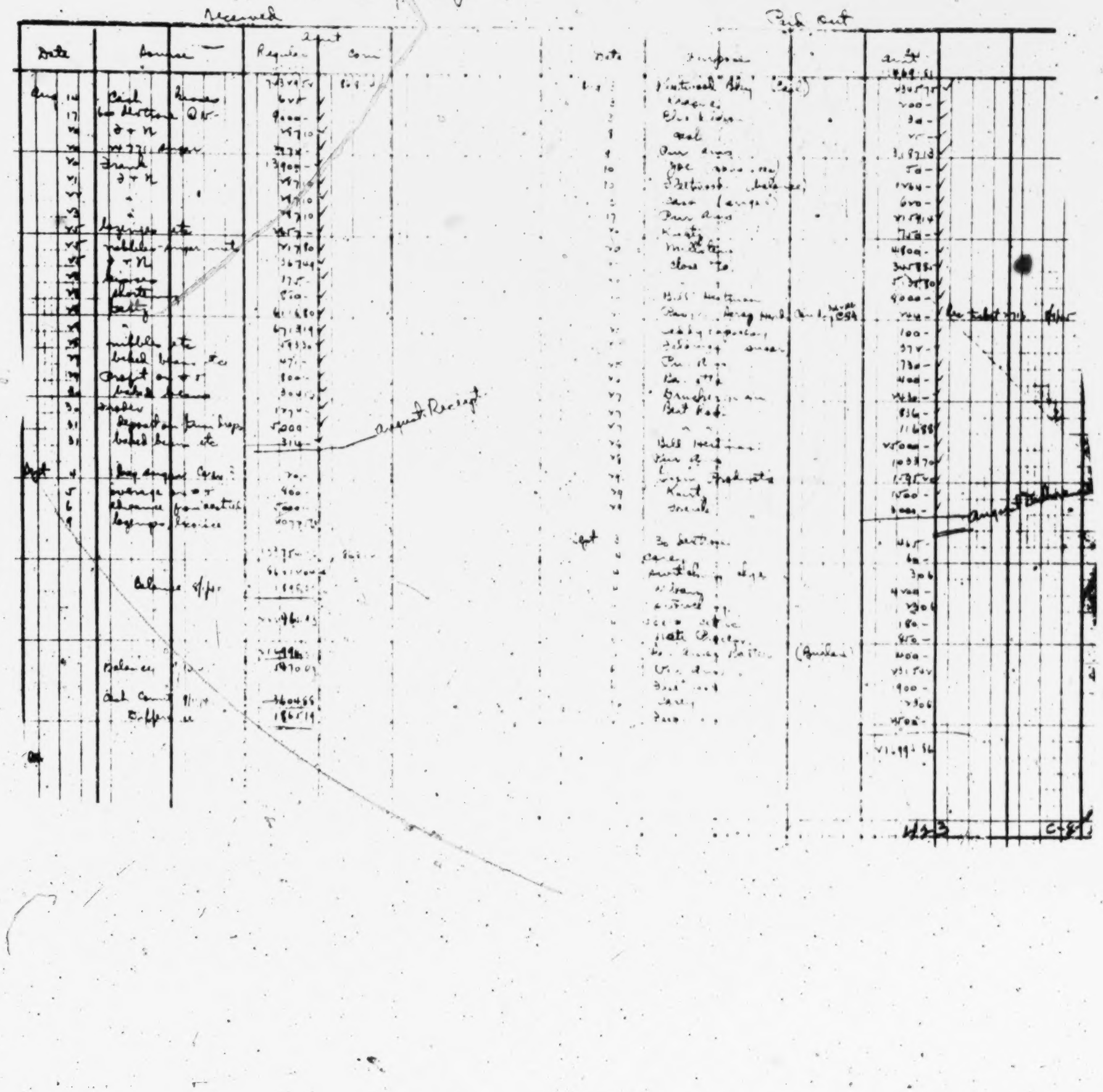
[illegible]	B. Bercu [illegible]	11800.00

421

Total Receipts	47155.16
Total Disbursements	46974.61
Balance	180.55

[fol. 423]

DEFENDANTS' EXHIBIT 666



Received from Sam Krane

4/1/53

[fol. 425]

DEFENDANTS' EXHIBIT 66H

Analysis of Currency a/c
August 1945

Date	From whom rec'd		Amt	Sales	Exchange	Box #	Purchases	General			
	Brought Fwd		144857.00	30.12.81	636.21 -	39400 -			11713.19		
Aug 22	Walco		250503			250503					
23	Volpit		249502			249502					
27	Hubert Co		250365			250365					
28	Walco		251740			251740					
29	Mike Cohen		530310			530310					
31	A.J. Sens		237147			237147					
31	✓		235011			235011					
31	✓		235111			235111					
31	✓		237211			237211					
31	✓		237095			237095					
		#	171996.95	30.12.81	636.21.00	66539.95	—		11713.19		

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Eatsum Food Products Co
Currency Account
June 1945

		Receipts	amt	Sales	cash Burlan
May	25	10 Drums Glucose	415.64	415.64	
		Baked Beans & Kisses	617.75	617.75	
	28	21 bbls Peanut Hearts	1376.23	1376.23	
		10 bbls "	639.66	639.66	
		Profit on #5	65.-	65.-	
		300 boxes sugar mat	300.-	300.-	
	15	Cash for Millstein	832.-	832.-	
	25	Profit on Casting	1000.-	1000.-	
	4/5	Sid Rubinson 1710 Dr @ 6½	1330.40	1330.40	
		Shotwell to Wechtel [illegible]	3405.-	3405.-	
	6	Frt & Disc Pur Ams	63.98	63.98	
	6	Root Beer Bbls	150.-	150.-	
	10	Shotwell to A.R. 4098.60			
		Less Kurtz 3800.-	298.60	298.60	
	12	Root beer bbls	329.20	329.20	
	13	Cash Sale	75.-	75.-	
		Shotwell to Price	4098.60	4098.60	
	15	Burlan	5500.-		5500.-
		Almonds	1030.-	1030.-	
		Pur Ams 3700 #5	592.-	592.-	
		Burlan	4500.-		4500.-
	18	Cert for 185 bags	925.-	925.-	
	20	Cash sale	46.-	46.-	
		Comm on #5	750.-	750.-	
		Cash sale. Gertz	[illegible]	[illegible]	
		" " Peanut Hearts	760.-	760.-	
	21	" " Licorice	[illegible]	[illegible]	
	22	" " "	[illegible]	[illegible]	
	26	Comm on #5	1245.-	1245.-	
	28	Licorice 3000#	891.-	891.-	
	28	" 1600	475.-	475.-	
	29	Shotwell to Rubinson	7109.40	7109.40	
	9/5	Profit on #5	165.-	165.-	
		Income Unaccounted for	[illegible]	[illegible]	
		TOTAL	[illegible]	[illegible]	10000.-
		Balance 5/1/45	[illegible]		
			[illegible]		
		Less Disbursement	[illegible]		4 #7
		Balance 6/30/45	[illegible]		

[fol. 428]

DEFENDANTS' EXHIBIT 66J

66-J

8

Analysis of ~~Cash~~ Currency Receipts
July 1945

Date	Drawer	Whom	Amt	Sales	Purchases	Exchange	Misc	A/c Rec
July	[illegible]		393.75	393.75				
	1000 Licenses		497 -	497 -				
	Rubinson		381.10	381.10				
	Waste paper		850	850				
	Licenses		1708.70	1708.70				
	Bert Roels		3000 -		3000 -			
	" "		4000 -		4000 -			
	" "		10000 -		10000 -			
	Curry Pressurt Co		1913.58					1913.58
	ck for freight		31.99				31.99	
	Bert Roels		4000 -		4000 -			
	cash sales		44.65	44.65				
	Bert Roels		1400 -		1400 -			
	Sid Rubinson		600 -	600 -				
	"		1457 -	1457 -				
	"		1614.75	1614.75				
	cash		534.60	534.60				
	Bert Roels		8105 -		8105 -			
	cash		237.60	237.60				
	[illegible]		125 -	125 -				
	Sid Rubinson		431.73	431.73				
	P Orrie		1506 -	1506 -				
	Bert Roels		11,970 -		11970 -			
	Mike Cohen		3734.37	3734.37				
	cash (profit on [illegible])		454.27	454.27				
	P Orrie		514.80	514.80				
	cash		59.40	59.40				
	Rosalie Bake Shop		365 -	365 -				
	cash		1200 -	1200 -				
	Bert Roels		5000 -		5000 -			
	Bert Roels		600	600 -				
			69210.75	19504.22	47475 -		31.99	1913.58

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[fol. 429]

DEFENDANTS' EXHIBIT 66K

66-K

Payments to Her-Bert Co
during July 1945

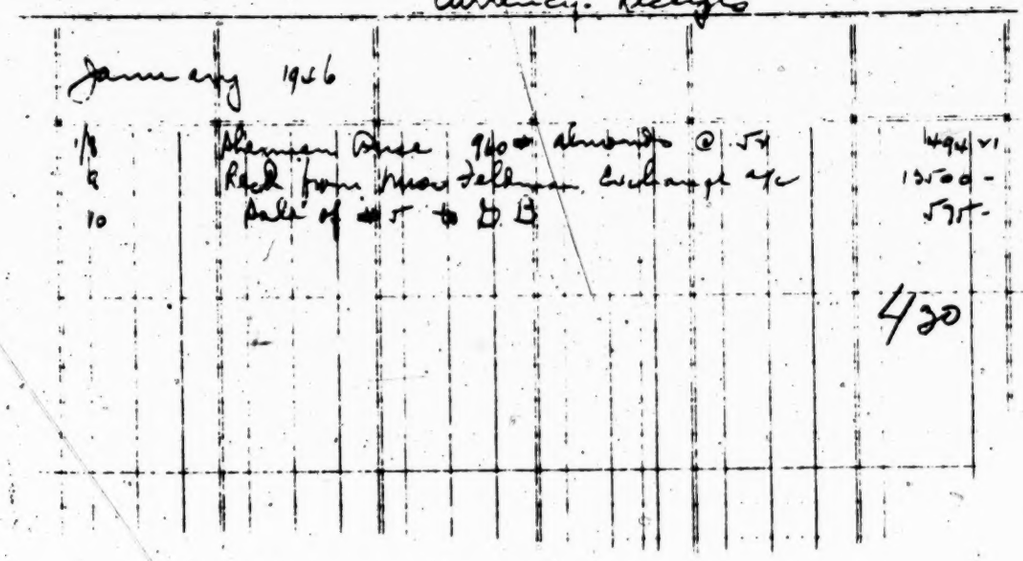
ck #				amt	In currency	Dif	pd outs
134	7/5		a	17300 -	17000 -	300 -	287 -
160	7/9		b	5445 -	1400 / 4000 -	45 -	190 -
287	7/17			8105 -	8105 -	—	239 40
350	7/24	cancel		11970 -	11970 -	—	100 -
444	7/27	"		5000 -	5000 -	—	
				47820 -		345 -	916 40
				02			345 -
							1161 40
				95640			956 40
						overpd ?	205 00

[fol. 430]

DEFENDANTS' EXHIBIT 66I.

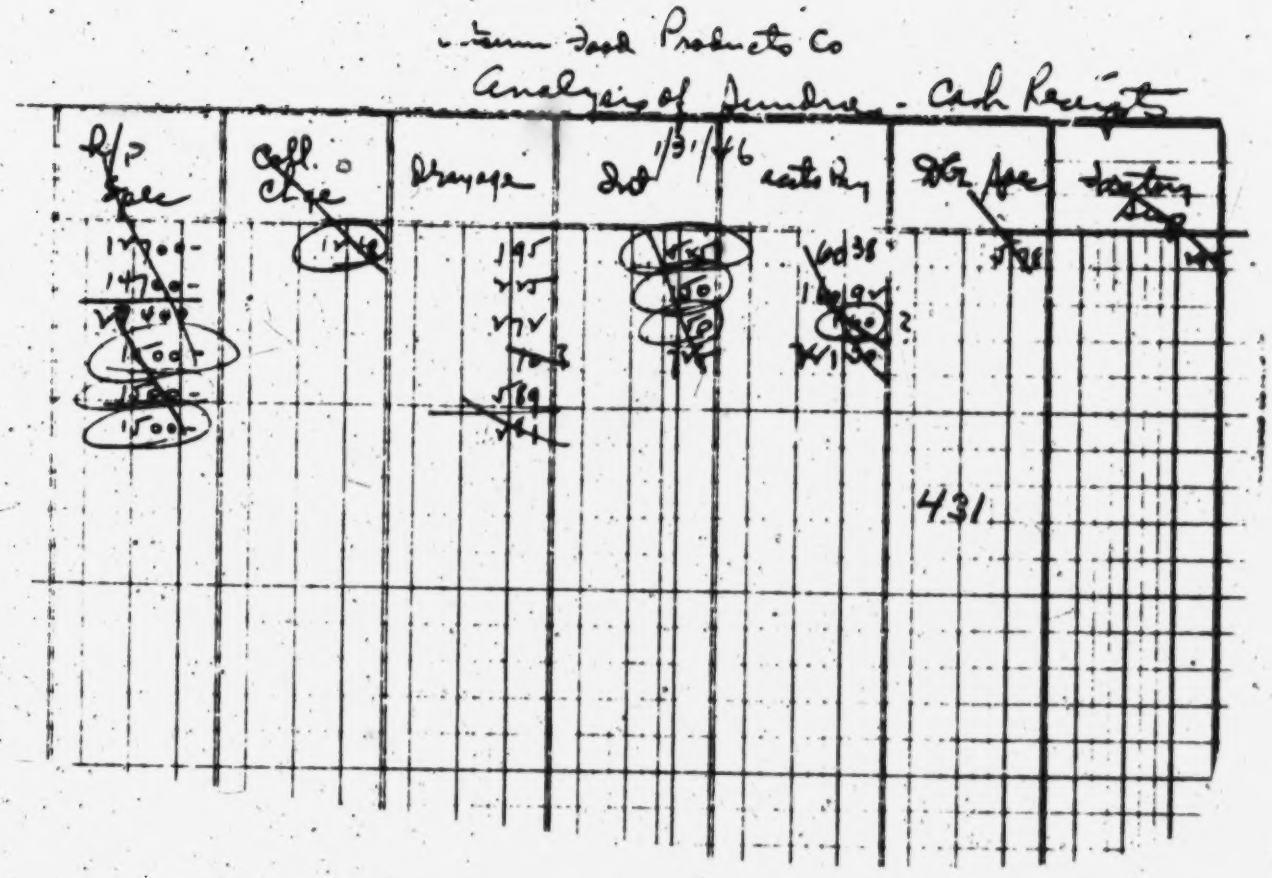
Estamin Food Products Co

Currency. Receipts



[fol. 431]

DEFENDANTS' EXHIBIT 66M



Currency Transactions - July 1945

Cash Received

Date		From Whom	amt	for what
July	3	Cash 45 x 15.75	393.75	Lestrose
	3	" 1000 licorice	297 -	
	3	" Robinson 1413 Shot	3815.10	no invoice
	3	" waste paper	850	
	5	" 3000 + 2840 licorice	1708.70	
	6	Bert Rock	3000 -	
	6	" "	4000 -	
	9	" "	10000 -	
	9	Burry Biscuit	191358	April balance
	9	Check drawn for fst	31991	100 bags corn sugar [illegible]
	11	Bert Rock	4000 -	
	11	cash sales	4465	
	11	Bert Rock	1400 -	
	11	Sid Robinson	600 -	2000 lbs licorice
	11	" "	1257 -	Licorice sweets
	16	" "	1614.75	4950 hard candy 2000 licorice
	17	cash	534.60	1900 lb licorice
	19	Bert Rock	8105 -	
	19	cash	237.60	20-40# licorice
	20	Pur [illegible]	125 -	
	20	Sid Robinson	481.70	2105 lbs hard candy
	20	S. Price	1500 -	licorice
	20	Bert Rock	1179.70 -	
	25	Mike Cohen	[illegible]	[illegible] lbs corn sugar
	25	cash	[illegible]	[illegible]
	25	S. Price	[illegible]	1000 lbs almonds
	25	cash	[illegible]	licorice
	26	[illegible]	365 -	100 [illegible]
	27	cash	1200	100 bags corn [illegible]
	27	cash Bert Rock	5000 -	
	27	cash	600 -	200 lbs licorice
			69210.74	
Balance July			8255	
			69[illegible]6	
			67164.93	
			21[illegible]3	
Balance [illegible]		on hand	1[illegible]	[illegible]

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[fol. 433]

Analysis of Currency A/c
August, 1945

Receipts

Date		Drawn	Exchange	Paid	Amt	Sales	Exchange		Bank	Purchases	Renewal
8/1/45	Cash - Reserve				45144	45144					
3	Hubee Coker				400	400					
8	Hunt + Watt - mid				76414	76414					
8	" S				19750	19750					
8	" N				76414	76414					
9	" N				75767	75767					
9	76 bags				7500	7500					
10	Standard				1500				1500		
13	" N				75765	75765					
13	Jack				50		50				
14	Kapoor				6500	6500					
17	600 Beatrone @ 15				9000	9000					
20	" N				78710	78710					
20	4771 Angrau				7970	7970					
20	Standard				13900				13900		
21	" N				78710	78710					
22	"				78710	78710					
23	"				78710	78710					
24	Page gr				7657	7657					
25	Rubber Angrau				71780	71780					
27	" N				36749	36749					
28	Kapoor				175	175					
28	Rotterdam				880	880					
28	Barty				61680	61680					
28	Barty				47123				S.P. Iyer	47123	
28	Rubber Ltd				79330	79330					
29	Basil Hearn gte				471	471					
29	Profit on sale				800	800					
30	Basil Hearn				30450	30450					
30	Brokers				11750	11750					
31	Regn from Comm Drogs				75000				Regmt	75000	
31	Bobak Hearn etc				314	314					
9/6	Wallace				1500		1500				
6	"				16791		16791				
7	"				75000		75000				
7	"				75000		75000				
8	"				48375		48375				
12	"				48360		48360				
17	"				850		850				
18	"				49784		49784				
29	" (Burlam)				5000		5000				
30	"				10000		10000				
	W J Wright				9000			9000			
	W J Wright				15000			15000			
					4485200	301791	1636100	39400		1171319	

[fol. 435]

DEFENDANTS' EXHIBIT 66P

Analysis of Currency Transactions other than Coins - August 19-

Cash Received

Date	From Whom	
Aug 3	Mike Cohen	
	Joe - Room	

[fol. 436]

Received from Sam Kraine

4/1/53

[fol. 437]

DEFENDANTS' EXHIBIT 66Q

Analysis of Currency a/c
August 1945

Date	Received from or Paid to Whom		Amount	Purchase	Freight		Expenses	Commission	Exchange	Deposit	Unaccounted	
Aug 3	Fleetwood Bakery		V345 75	V345 75								
3	Kiyoame		V00 -				V00 -					
3	Blue Ribbon		30 -		30 -							
6	Cash		V5 -	V5 -								
9	Pan Am		3 187 13	3 187 13					V0 -			
10	Joe Fleetwood		V0 -									
10			1V64 -	1V64 -								
13	Sugar		6V0 -	6V0 -								
17	Pan Am		V 159 14	V 159 14								
V0	Kirsty		750 -	750 -								
V0	Millstein		4800 -	4800 -								
V0	Close to		2V 785	2V 785								
V0	Close to		5 135 80	5 135 80								
V0	Bill Heitman		8000 -							8000 -		
V1	Sugar Hard Candy		V44 -	V44 -								
V5	Sally Rapaport		100 -				100 -					
V5	Sugar		37V -	37V -								
V5	Pan Am		730 -	730 -								
V6	Baratta		400 -	400 -								
V6	Triangle Paper		V43 0 -	V43 0 -								
V7	Best Rock		836 -					836 -				
V7			11688					11688				
V8	Bill Heitman		V5000 -							V5000 -		
V8	Pan Am		10 3370	10 3370								
V9	Triangle Products		1 V85 20	1 V85 20								
V9	Sid Kurtz		1500 -	1500 -								
V9	Triangle		2000 -							2000 -		
6	Reader Novelty Co.		1500 -	1500 -								
6	Matt Brownell Jewels		850 -	850 -								
6	Charles Jewels		116V581	116V581								
7	Triangle Paper file		V5000 -							V5000 -		
9	Matt Brownell Jewels		484375	484375								
10			490360								490360	
V7	Matt Brownell		850 -	850 -								
V8	Heath Distributing Co.		4947 84	4947 84								
V8	Burden Corp		5000 -								Burden	5000 -
V8	Feldman		V500 -						V500 -			
V8			1500 -						1500 -			
V8			V508 -						V500 -			
V8			4 69 69 0						4 69 69 0			
V1			V1 V581						V1 V581			
V1			V000 -						V000 -			
V5			500 -						500 -			
V8			V50 -						V50 -			
V9			10 51 16						10 51 16			
			135 9V 137	4 46 7 92	30 -		200 -	8 V88	17 173 67	61 000 -	490 360	

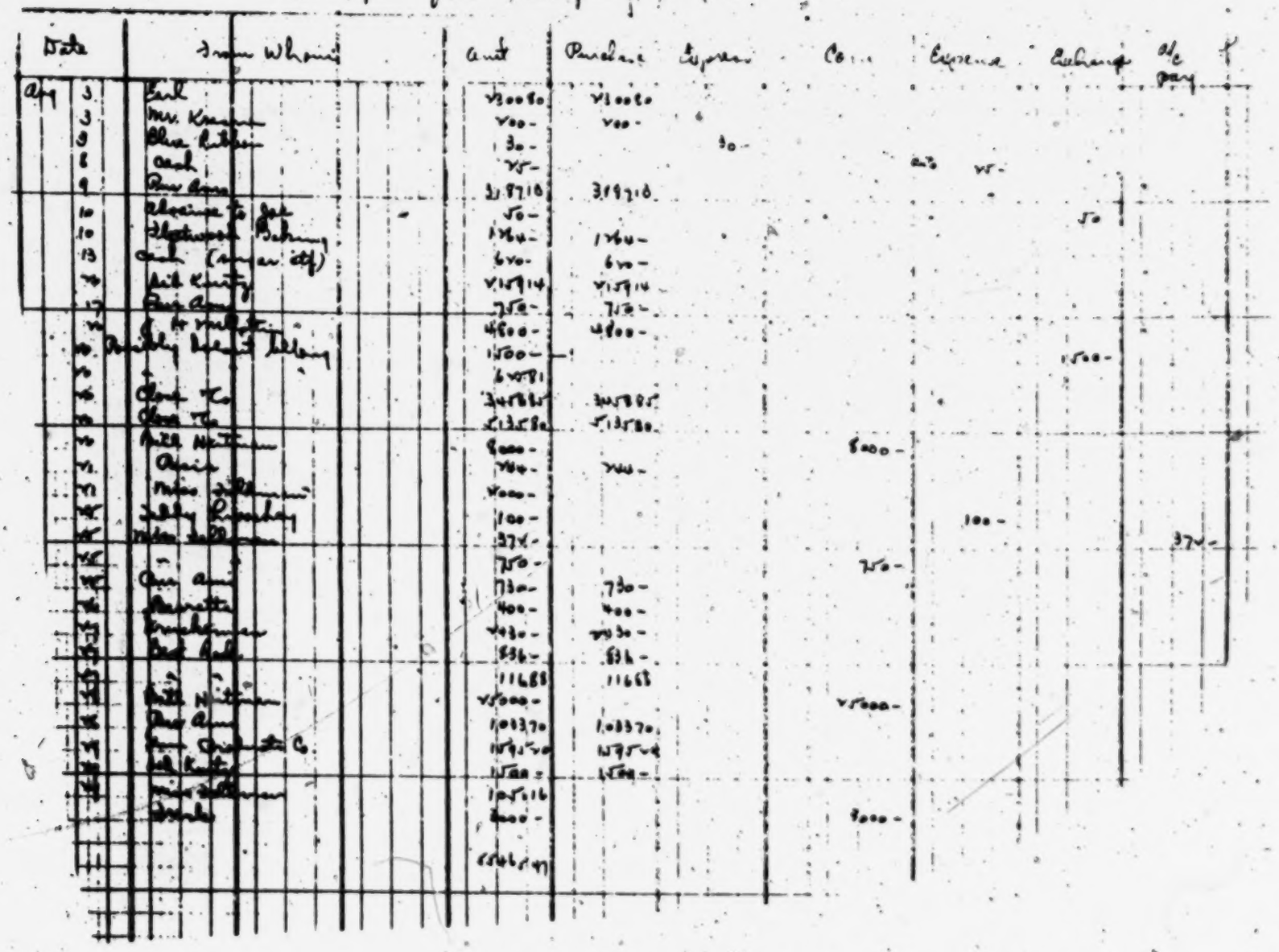
DEFENDANTS' EXHIBIT 66R

(See Opposite) ☞

[fol. 439]

DEFENDANTS' EXHIBIT 66R

Currency Card - August 1945
Analysis for bookkeeping purposes


Date
From Whom
Amt
Purchase
Expense
Co...
Expense
Exchange
A/c Pay
Aug
Earl
Mrs. Kramer
Clara Kibler
Carl
Rev Acres
Clarence to Jet
Hazlewood Behring
Carl (Arnan etc)
Art Kirby
Rev Acres
Clark Mo
Clara Mo
Acct Mo
Clara
Mrs Hazlewood
Mrs Behring
Carl
Hazlewood
Behring
Art

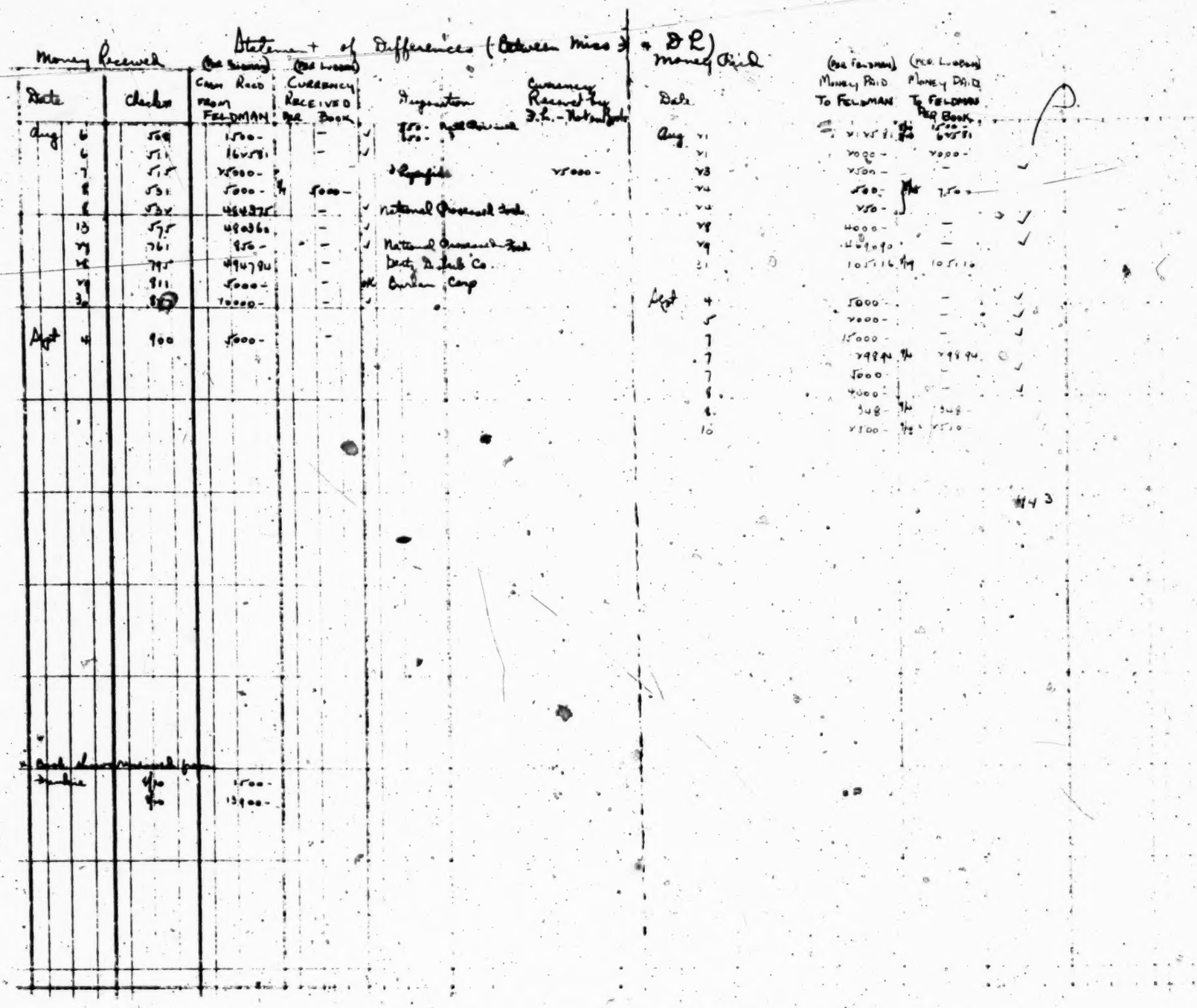
[fol. 440]

Received from Sam Krane

4/1/53

Reconciliation of Cash in Box # 2
10/10/45

Cash Received from Corn Deal			21695501
Borrowed from Bill			27000-
			24395501
Less Paid out on Corn Deal			
	Harris	53000-	
	Reid	79100-	
		132100-	
Major Ryan		2000-	
J & R for Bill Giglio		1500-	
Dave Dubben		9674 47	145274 47
			98680 54
Less following cash not yet received			
10/3 Baum		184283	
Drueckerman		5304 54	7147 37
			91533 17
Less advance to Bill Heitman			300-
			91233 17
Less credit on Volpit a/c for shortage in weight			37 13
			91196 04
Cash Count (per tank)	2638080		
I.O.U. from Box # 1 (Excl. 66000)			
* I.O.U. from Box 1 for purchases	66502 84		
	92883 64		
Less: Advances			
Vic Bonomo	1688 91		
	91194 73		
Difference			1 31
	66502 84		
* Less transfer to Box # 2			
Payments to Bill Processed	17243 94		
Balance	49258 90		



Statement of Differences (Between Miss F. & D.L.)

Money Received

Date		Check*	(Per Feldman) Cash Recd from Feldman	(Per Lubben) Currency Received per Book		Disposition	Currency Received by F.L. - Not on Book
Aug	6	509	1500-	—	✓	750- [illegible]	
	6	511	16x581	—	✓	650-	
	7	515	x5000-			[illegible]	x5000-
	8	531	5000-	5000-			
	8	53x	484375	—	✓	National Processed Food	
	13	575	480360	—	✓		
	29	761	850-	—	✓	National Processed Food	
	28	795	494784	—		Dentz D. Sub Co.	
	29	811	5000-	—	ok	Burlan Corp	
	30	8[illegible]	10000-	—	✓		
Sept	4	900	5000-	—			

* Book shows received from Dunkie 8/10 1500-
8/10 13900-

Money Paid

Date		(Per Feldman) Money Paid to Feldman	(Per Lubben) Money Paid to Feldman per Book	
Aug	x1	x1x581 8/10	1500- 6x581	
	x1	x000-	x000-	
	x3	x500-	—	✓
	x4	500- 8/10	750-	
	x4	x50-		
	x8	4000-	—	✓
	x9	409090	—	✓
	31	105116 8/10	105116	
Sept	4	5000-	—	✓
	5	x000-	—	✓
	7	15000-	—	✓
	7	x9894 8/10	x9894	
	7	5000-	—	✓
	8	4000-	—	✓
	8	348- 8/10	348-	
	10	x500- 8/10	x510-	

443

[fol. 444]

Received from Sam Krane

4/1/53

2CA143

O. Eatsum

Exceptions.

(1) Loans Exchanges

What shall we do with this amount?

Charge off against Capital or charge the Purchase acct.

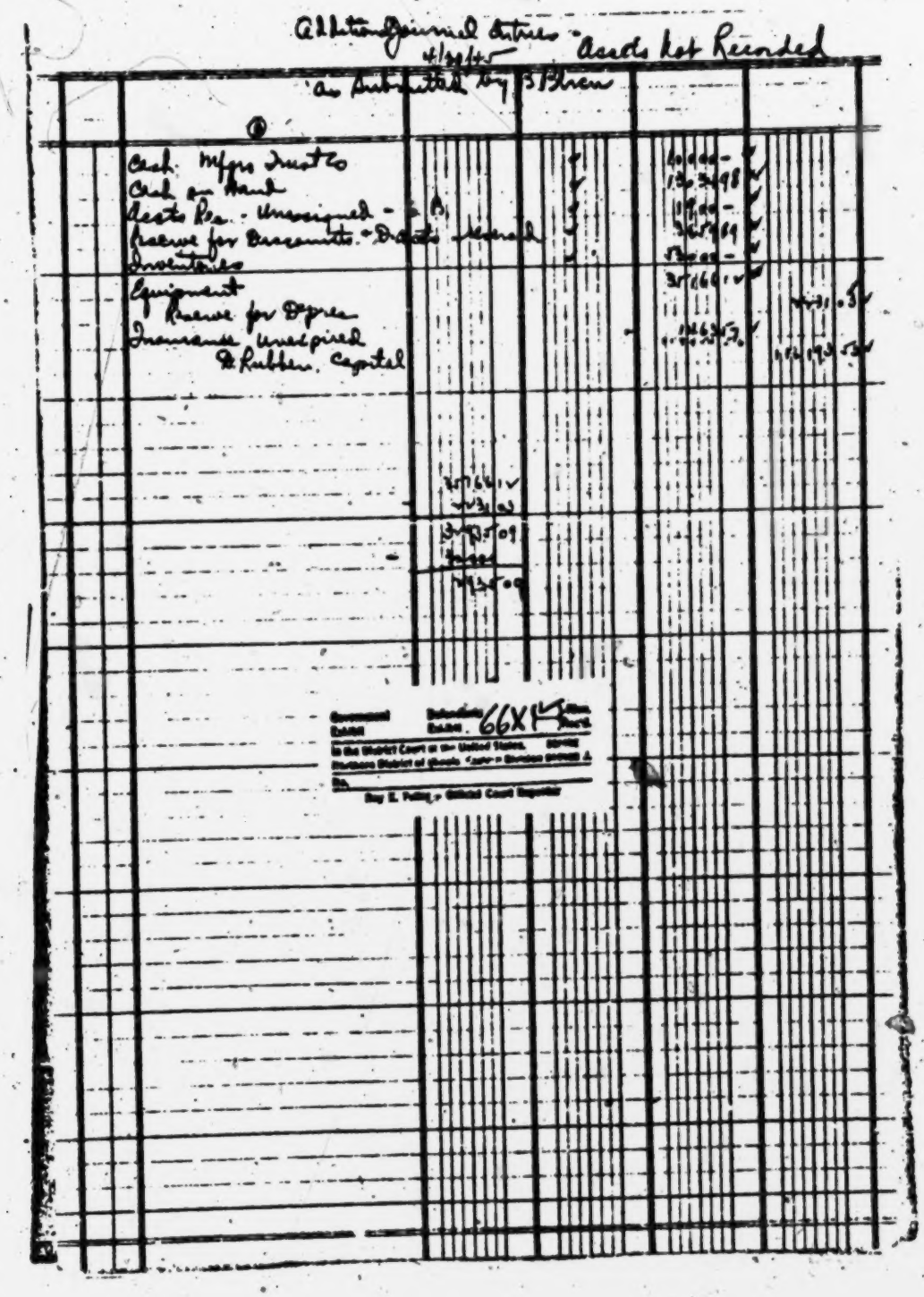
The amount to be adjusted is 113 150.17

(2) Machinery Equipment

Shall we write off the plant a/c as sold to Senal Conf. for $25000 — or shall we write off the plant' Fixtures as sold to General Conf for $25000 — or shall we show the amount of fixtures taken over by American Brands at net book value.

[fol. 446]

DEFENDANTS' EXHIBIT 66X



Catsuma Food Products Co.

Inventory Summary
July 31, 1945

Finished Merchandise	4836.30
Goods in Process	999.70
Raw Material	54260.93
Packing Material Inventory	33094.91
Merchandise in Public Warehouses	104170.94
Total	249881.76

Adjustments to Bercu figures

1- add 10 bags almonds 112 lb = 1120 lbs @ 79 — 884.80
186 bags on Bercu's summary (false mine)
190 " actually on hand
10 difference

2- Merchandise in transit
Carload of 75600 lbs Pastillos @ [illegible]
Shipped to Western Transportation Co
Los Angeles, Calif
J H Millstein mdse — Freight on above — Western Trans Co (Ltd) 202626

3. The following invoices of the Her-Bert Co (not in physical inv)

7/18/45	1056 [illegible] cans pineapple fruit extract	8105	omit from Inventory since [illegible]
7/27/45	3030 gal flavored syrup	5000	
7/24/45	32 bags shelled almonds	5209.32	
	11 bbls choc fudge base	189.80	
	69 bags Brazilian cocoa	3187.80	
	6 bags fancy shelled almonds	104.08	

4- Lee Chocolate Co Merchandise received on 7/6/45 at plant Invoice entered in purchase book in August — 97.80

5- Claude Jones carload of peanuts received 7/27/45 50,075 lbs @ 15¢ — 750.375

[illegible] Commission on same — [illegible]

6- add Inventory differences per schedule attached — 25,310 — 5741.505
Total Inventory 7/31/45 — [illegible] — 28222.81

DEFENDANTS' EXHIBIT 67A

THE HUBINGER CO.

PURE CORN PRODUCTS **KEOKUK, IOWA** ESTABLISHED 1901

CUSTOMER'S ORDER & DATE L 11-[illegible] [illegible]
DATE ENTERED 10-[illegible]

REFER TO INVOICE NO. [illegible]
INVOICE DATE [illegible]
ORDER NO. [illegible]

SOLD TO: THE [illegible] MFG. CO.
[illegible] W. POTOMAC AVE.
CHICAGO 51, ILLINOIS

SHIP TO: SAME

SHIP WHEN: [illegible] DATE 15487
DATE: VIA [illegible] F.O.B.
TERMS: [illegible] NET 11

SHIPPED ON INVOICE DATE FROM: KEOKUK
CHICAGO

TYPED BY _____ CHECKED BY _____
EXTENDED BY _____ CHECKED BY _____

☐ CONFIRMATIONS

☐ WAREHOUSE RELEASE ORDER NOTIFICATION OF SHIPMENT

LOADING TICKETS

3	4	5	6	7	8

INVOICE: CUSTOMER'S COPY

1	2	3	4	5	6

PAY SOURCE: THE HUBINGER CO.
CHICAGO

UNITS	UNIT CODE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK BLASTIC STARCH			
1	TANK	CAR 43° OK CORN SYRUP UNMIXED [illegible] (MARKET PRICE DATE OF SHIPMENT)	3.09 CWT.		8949.71

22CK143

67A

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

46-[illegible]

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty [illegible]

[fol. 449]

DEFENDANTS' EXHIBIT 67B

THE HUBINGER CO.

KEOKUK, IOWA

PURE CORN PRODUCTS — ESTABLISHED 1881

CUSTOMER'S ORDER & DATE — L 11-[illegible] [illegible]
DATE ENTERED — 10-[illegible]

REFER TO INVOICE NO. — [illegible]
INVOICE DATE — 1-[illegible]-46
ORDER NO. — [illegible]

SOLD TO — THE [illegible] MFG. CO.
[illegible] S. [illegible] AVE.
CHICAGO 31, ILLINOIS

SHIP TO — [illegible]

SHIP WITH CAR INITIALS NOW SHIPPED — DATE [illegible]
ROUTE — VIA [illegible] F.O.B. CHICAGO
TERMS. — [illegible] NET 11

INVOICE DATE FROM — KEOKUK

TYPED BY ____ CHECKED BY ____
EXTENDED BY ____ CHECKED BY ____

☐ CONFIRMATIONS

☐ WAREHOUSE DELIVERY ORDER NOTIFICATION OF SHIPMENT

LOADING TICKETS

3	4	5	6	7	8

INVOICE: CUSTOMER'S COPY

1	2	3	4	5	6

PAY TO THE HUBINGER CO. CHICAGO

[illegible]	[illegible]	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK ELASTIC STARCH			
1		TANK CAR [illegible] OK CORN STRUP UNMIXED [illegible] (MARKET PRICE RATE OF SHIPMENT)	3.09 CWT.		[illegible].63

[illegible]

67B

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or other ch[illegible] [illegible] imposed by the Government on the product herein sold, or any component part thereof, will be for the account of the buyer.

386

[fol. 450]

DEFENDANTS' EXHIBIT 67C

THE HUBINGER CO.

PURE GRAIN PRODUCTS KEOKUK, IOWA ESTABLISHED 1901

CUSTOMER'S ORDER NO. & DATE L 8-8-46 DATE SHIPPED 8-9-46 $8090

REFER TO INVOICE NO. 1386 INVOICE DATE 8-9-46 ORDER NO. 1078

SOLD TO THE SUDDELL MFG. CO. 3501 S. POTOMAC AVE. CHICAGO 31, ILLINOIS

SHIP TO SAME

8-9-46 IF POSSIBLE-SELLERS OPTION

SHIP WHEN 8-9-46 SHIP INSTRUCTIONS GATX 57865 ROUTE VIA GB&S-SRS-CMSTP SHIPPED ON INVOICE DATE FROM KEOKUK F.O.B. CHICAGO

TERMS. 2% 10-EOM 60

TYPED BY____ CHECKED BY____

EXTENDED BY____ CHECKED BY____

☑ CONFIRMATIONS

☐ WAREHOUSE DELIVERY ORDER NOTIFICATION OF SHIPMENT

LOADING TICKETS 3 4 5 6 7 8

INVOICE: CUSTOMER'S COPY 1 2 3 4 5 6

PAY DRAFT TO THE ORDER OF THE HUBINGER CO. CHICAGO

SALESMAN

WEIGHT	TARE		DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
			QUICK CLASSIC SYRUPS			
1			TANK CAR LOT OF CORN SYRUP UNREFINED 1,367,640 LBS. 1,217,000 LBS. 92.25% (MARKET PRICE DATE OF SHIPMENT)	3.09 CWT.		8957.35
			OUR RECORDS ONLY: CHARGE AGAINST CORN PURCHASED			

3.34

S 2C 13-43

FILED

67-C W

CAUTION: Delegation of powers and discretion when signing bills of lading may place the buyer in the position of becoming himself a "dealer" under the Emergency Price Control Act.

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or other charges levied or imposed by the Government on the products herein sold, or any component part thereof, will be for the account of the buyer.

[fol. 451]

DEFENDANTS' EXHIBIT 67D

[redacted]

THE HUBINGER CO.

PURE CORN PRODUCTS **KEOKUK, IOWA** ESTABLISHED 1881

TYPED BY_____ CHECKED BY_____

EXTENDED BY_____ CHECKED BY_____

☐ CONFIRMATIONS

☐ WAREHOUSE DELIVERY ORDER NOTIFICATION OF SHIPMENT

LOADING TICKETS

3	4	5	6	7	8

INVOICE: CUSTOMER'S COPY

1	2	3	4	5	6

TOMER'S ER & DATE L 1-16-46 #6184
E ENTERED 1-21-46

REFER TO INVOICE NO. 1671
INVOICE DATE 2-15-46
ORDER NO. 1328

OLD TO THE SHOTWELL MFG. CO.
3501 W. POTOMAC AVE.
CHICAGO 51, ILLINOIS

HIP O SAME

P WHEN INITIALS SHIPPED GATX 2169
TE VIA CB&Q-BRC-CMSTP
ERMS. 2% 10 NET 11

SHIPPED ON INVOICE DATE FROM KEOKUK
F.O.B. CHICAGO

PAY BROKER THE HUBINGER CO. CHICAGO

SALESMAN

UNITS	SIZE CASE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK ELASTIC STARCH			
		TANK CAR 43° OK CORN SYRUP UNMIXED 138820#...43400#...94620#	3.09 CWT.		2923.76
		(MARKET PRICE DATE OF SHIPMENT)			

S2ER143

OUR RECORDS ONLY;
CHARGE AGAINST
CORN PURCHASES

67D W

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

451

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or other charges levied or imposed by the Government on the product herein sold, or any component part thereof, will be for the account of the buyer.

[fol. 452]

DEFENDANTS' EXHIBIT 67E

THE HUBINGER CO.

PURE CORN PRODUCTS — KEOKUK, IOWA — ESTABLISHED 1901

STOMER'S DER & DATE TE ENTERED L 3-4-46 3-4-46

REFER TO INVOICE NO. 2264
INVOICE DATE 3-4-46
ORDER NO. 3087

SOLD TO SHOTWELL MFG. CO. 3501 W. POTOMAC AVE. CHICAGO 5, ILLINOIS

SHIP TO SAME

SHIP W CAR INITIALS HOW SHIPPED ROUTE VIA TRUCK COLLECT

TERMS. 2% 10 NET 11

ED ON ICE DATE FROM KEOKUK

F.O.B. OUR PLANT

TYPED BY _____ CHECKED BY _____

EXTENDED BY _____ CHECKED BY _____

☐ CONFIRMATIONS

☐ WAREHOUSE DELIVERY ORDER NOTIFICATION OF SHIPMENT

LOADING TICKETS 3 4 5 6 7 8

INVOICE: CUSTOMER'S COPY 1 2 3 4 5 6

PAY BROKER THE HUBINGER CO. CHICAGO

SALESMAN

UNITS	SIZE CASE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK ELASTIC STARCH			
21	[redacted]	[redacted] QUICK ELASTIC STARCH, 2100# MULTIWALLED PAPER BAGS	4.59 CWT.		96.39

(MARKET PRICE DATE OF SHIPMENT)

OUR RECORDS ONLY,
#55 THIN BOILING

OUR RECORDS ONLY
CHARGE AGAINST
CORN PURCHASES

67E

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

46-30M-2-45

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or other charges levied or imposed by the Government on the articles herein sold, or any component part thereof, will be for the account of the buyer.

[fol. 453]

DEFENDANTS' EXHIBIT 67F

THE HUBINGER CO.

PURE CORN PRODUCTS — KEOKUK, IOWA — ESTABLISHED 1881

CUSTOMER'S ORDER & DATE: L 1-30-46 #627B
DATE ENTERED: 8-1-46

REFER TO INVOICE NO. 2357
INVOICE DATE 3-5-46
ORDER NO. 1681

SOLD TO: THE SHOTWELL MFG. CO.
3501 W. POTOMAC AVE.
CHICAGO 51, ILLINOIS

SHIP TO: SAME

SHIP WHEN —
CAR INITIALS OR SHIPPED GATX 2147
ROUTE VIA
TERMS. 2% 10 NET 11

SHIPPED ON INVOICE DATE FROM KEOKUK
F.O.B. CHICAGO

TYPED BY ____ CHECKED BY ____
EXTENDED BY ____ CHECKED BY ____
☐ CONFIRMATIONS
☐ WAREHOUSE DELIVERY ORDER NOTIFICATION OF SHIPMENT
LOADING TICKETS 3 4 5 6 7
INVOICE: CUSTOMER'S COPY 1 2 3 4 5
PAY BROKER THE HUBINGER CO. CHICAGO
SALESMAN

UNITS	SIZE CASE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK ELASTIC STARCH			
1		TANK CAR 43° DK CORN SYRUP UNMIXED 138000#...43860#...94140#	3.09 CWT.		8987.87
		(MARKET PRICE DATE OF SHIPMENT)			
		OUR RECORDS ONLY, CHARGE AGAINST CORN PURCHASES			

67F W

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or othe[illegible] levied or assessed by the Government on the product herein sold, or any component part thereof, will be for the account of the buyer.

[fol. 454]

DEFENDANTS' EXHIBIT 67G

[redacted]

THE HUBINGER CO.

PURE CORN PRODUCTS **KEOKUK, IOWA** ESTABLISHED 1881

TYPED BY _____ CHECKED BY _____

EXTENDED BY _____ CHECKED BY _____

☐ CONFIRMATIONS

☐ WAREHOUSE DELIVERY ORDER NOTIFICATION OF SHIPMENT

LOADING TICKETS

3 4 5 6 7 8

INVOICE: CUSTOMER'S COPY

1 2 3 4 5 6

CUSTOMER'S ORDER & DATE L 1-30-46 #6277
DATE ENTERED 8-1-46

REFER TO INVOICE NO. 2557
INVOICE DATE 3-8-46
ORDER NO. 1682

SOLD TO
THE SHOTWELL MFG. CO.
3501 W. POTOMAC AVE.
CHICAGO, ILLINOIS(51)

SHIP TO SAME

SHIP WHEN
CAR INITIALS HOW SHIPPED GATX 4131
ROUTE VIA WABASH-BRC-CMSTP F.O.B.
SHIPPED ON INVOICE DATE FROM KEOKUK CHICAGO

TERMS. 2% 10 NET 11

PAY BROKER THE HUBINGER CO. CHICAGO

SALESMAN

UNITS	SIZE CASE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK ELASTIC STARCH			
1		TANK CAR 43° MK CORN SYRUP UNMIXED 136720#...42040#...94680#	3.09 CWT.		2925.61
		(MARKET PRICE DATE OF SHIPMENT)			

OUR RECORDS ONLY,
CHARGE AGAINST
CORN PURCHASER.

32CA 142

67G

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

454

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or other charge levied or imposed by the Government on the product herein sold, or any component part thereof, will be for the account of the buyer.

[fol. 455]

DEFENDANTS' EXHIBIT 67H

[redacted]

THE HUBINGER CO.

PURE CORN PRODUCTS — KEOKUK, IOWA — ESTABLISHED 1901

CUSTOMER'S ORDER & DATE L 2-27-46 #6457
DATE ENTERED 3-4-46

REFER TO INVOICE NO. 4070
INVOICE DATE 4-9-46
ORDER NO. 3007

SOLD TO [illegible] CO.
3501 S. POTOMAC AVE.
CHICAGO 51, ILLINOIS

SHIP TO SAME

4-9-46 IF POSSIBLE-SELLERS OPTION

SHIP WHEN
CAR INITIALS
HOW SHIPPED GATX 12845
ROUTE VIA CRIP-BRC-CMSTP
SHIPPED ON
INVOICE DATE
FROM KEOKUK
F.O.B. CHICAGO
TERMS. 2% 10 NET 11

TYPED BY _____ CHECKED BY ___
EXTENDED BY _____ CHECKED BY ___
☐ CONFIRMATIONS
☐ WAREHOUSE DELIVERY ORDER NOTIFICATION OF SHIPMENT
LOADING TICKETS 3 4 5 6 7
INVOICE: CUSTOMER'S COPY 1 2 3 4 5
PAY BROKER THE HUBINGER CO. CHICAGO
SALESMAN

UNITS	SIZE CASE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK ELASTIC STARCH			
1		TANK CAR 43° DE CORN SYRUP UNMIXED 157800#...43000#...94800#	3.09 CWT.		2929.32
		(MARKET PRICE DATE OF SHIPMENT)			
		OUR RECORDS ONLY; CHARGE AGAINST CORN PURCHASES			

S2CW-3

67H

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

16-30M-2-45

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or other charge levied or imposed by the Government on the product herein sold, or any component part thereof, will be for the account of the buyer.

[fol. 456]

DEFENDANTS' EXHIBIT 67 I

[redacted]

THE HUBINGER CO.

PURE CORN PRODUCTS — KEOKUK, IOWA — ESTABLISHED 1901

TYPED BY _____ CHECKED BY _____

EXTENDED BY _____ CHECKED BY _____

☐ CONFIRMATIONS

☐ WAREHOUSE DELIVERY ORDER NOTIFICATION OF SHIPMENT

CUSTOMER'S ORDER & DATE L 8-27-46 #6460
DATE ENTERED 3-4-46

REFER TO INVOICE NO. 4093
INVOICE DATE 4-28-46
ORDER NO. 3008

SOLD TO: THE SHOTWELL MFG. CO.
3501 W. POTOMAC AVE.
CHICAGO 51, ILLINOIS

SHIP TO: SAME

SHIP WHEN
CAR INITIALS GATX 15852
HOW SHIPPED
ROUTE VIA [illegible]
TERMS. 2% 10 NET 11

SHIPPED ON INVOICE DATE FROM KEOKUK
F.O.B. CHICAGO

LOADING TICKETS: 3 4 5 6 7 8

INVOICE CUSTOMER'S COPY: 1 2 3 4 5 6

PAY DRAWN THE HUBINGER CO. CHICAGO

UNITS	SIZE CASE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK ELASTIC STARCH			
1		TANK CAR 43° OK CORN SYRUP UNMIXED 138300#...43400#...94900#	3.09 CWT.		2932.41
		(MARKET PRICE DATE OF SHIPMENT)			

OUR RECORDS ONLY,
CHARGE AGAINST
CORN PURCHASES

NOTICE
See additional charge issued for price adjustment effective April 11, 1946.

67-I

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or other charges levied or imposed by the Government on the product herein sold or any component part thereof, will be for the account of the buyer.

[fol. 457]

THE HUBINGER CO.

PURE CORN PRODUCTS **KEOKUK, IOWA** ESTABLISHED 1881

TYPED BY _____ CHECKED BY _____

EXTENDED BY _____ CHECKED BY _____

☐ CONFIRMATIONS

☐ WAREHOUSE DELIVERY ORDER NOTIFICATION OF SHIPMENT

LOADING TICKETS

3	4	5	6	7	8

INVOICE: CUSTOMER'S COPY

1	2	3	4	5	6

CUSTOMER'S ORDER & DATE
DATE ENTERED

REFER TO INVOICE NO. 8-1459
INVOICE DATE 8-[illegible]-46
ORDER NO.

SOLD TO
The Shotwell Mfg. Co.
3501 W. Potomac Ave.
Chicago 51, Illinois

SHIP TO

SHIP WHEN
CAR INITIALS
HOW SHIPPED
ROUTE

SHIPPED ON INVOICE DATE FROM
F.O.B.

TERMS. 2% 10 net 11

PAY BROKER

SALESMAN

UNITS	SIZE CASE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK ELASTIC STARCH ADDITIONAL CHARGE [illegible] INVOICE #4893 of 4-[illegible]-46			
1	Tank car	43° OK Corn Syrup Unmixed 138300#...43400#...94900#	.29 cwt.		275.21

67-I-2

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

[illegible]-3066-2-45

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or other charges levied or imposed by the Government on the product herein sold, or any component part thereof, will be for the account of the buyer.

394

[fol. 458]

2-27-46 #6460
3-4-46

4893
4-28-46
3008

THE SHOTWELL MFG. CO.
3501 W. POTOMAC AVE.
CHICAGO 51, ILLINOIS

SAME

GATX 15852
VIA CD&Q-BRC-CMSTP
2% 10 NET 11

KEOKUK

CHICAGO

THE ROBINSON C~~o~~.
CHICAGO

29
~~3009~~ CWT.

275.21
~~2952.41~~

TANK CAR 43° UK CORN SYRUP UNMIXED
138300#...43400#...94900#
~~(MARKET PRICE DATE OF SHIPMENT)~~

67-I-3

[fol. 459]

DEFENDANTS' EXHIBIT 67J

THE HUBINGER CO.

PURE CORN PRODUCTS **KEOKUK, IOWA** ESTABLISHED 1881

CUSTOMER'S ORDER & DATE 3-26-46 #6594
DATE ENTERED 3-26-46

REFER TO INVOICE NO. 5[illegible]
INVOICE DATE 3-7-46
ORDER NO. 3066

SOLD TO: THE SHOTWELL MFG. CO.
3501 W. POTOMAC AVE.
CHICAGO, ILLINOIS (51)

SHIP TO: SAME

3-7-46 IF POSSIBLE-SELLERS OPTION

SHIP WHEN
CAR INITIALS NOW SHIPPED GATX 18167
ROUTE VIA [illegible]
TERMS. 2% 10 NET 11

SHIPPED ON INVOICE DATE FROM KEOKUK
F.O.B. CHICAGO

TYPED BY ____ CHECKED BY ____
EXTENDED BY ____ CHECKED BY ____

☐ CONFIRMATIONS

☐ WAREHOUSE DELIVERY ORDER NOTIFICATION OF SHIPMENT

LOADING TICKETS

3	4	5	6	7	8

INVOICE: CUSTOMER'S COPY

1	2	3	4	5	6

PAY BROKER THE HUBINGER CO.
SALESMAN CHICAGO

UNITS	SIZE CASE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK ELASTIC STARCH			
		TANK CAR 43° OK CORN SYRUP UNMIXED 133700#...39700#...94000#	3.09 CWT.		[illegible]
		(MARKET PRICE DATE OF SHIPMENT)			
		OUR RECORDS ONLY, CHARGE CORN DEAL			

67-J 4 ✓

S DEA 143

NOTICE
See additional charge issued for price adjustment effective April 11, 1946.

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

O46-3004-2-45

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or other charges levied or imposed by the Government on the product herein sold, or any component part thereof, will be for the account of the buyer.

THE HUBINGER CO.

PURE CORN PRODUCTS — KEOKUK, IOWA — ESTABLISHED 1901

CUSTOMER'S ORDER & DATE L
DATE ENTERED

REFER TO INVOICE NO. 8-1458
INVOICE DATE 8-[illegible]-46
ORDER NO.

SOLD TO
The Shotwell Mfg. Co.
3501 N. Potomac Ave.
Chicago 51, Illinois

SHIP TO

SHIP WHEN
CAR INITIALS
HOW SHIPPED
ROUTE

SHIPPED ON INVOICE DATE FROM

TERMS. 2% 10 Net 11

F. O. B.

TYPED BY ____ CHECKED BY T
EXTENDED BY ____ CHECKED BY ____
☐ CONFIRMATIONS
☐ WAREHOUSE DELIVERY ORDER NOTIFICATION OF SHIPMENT

LOADING TICKETS
3 4 5 6 7 8

INVOICE: CUSTOMER'S COPY
1 2 3 4 5 6

PAY FROM

SALESMAN

UNITS	SIZE CASE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK ELASTIC STARCH ADDITIONAL CHARGE ON OUR INVOICE #5353 of 5-7-46			
1	Tank Car	43° DE Corn Syrup Unmixed 133700#...39700#...94000#	.29 cwt.		272.60

67J-2

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

O46 .0M-2-45

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates or should there be any new or increased duty, tax or other charges levied or imposed by the Government on the product herein sold, or any component part thereof, will be for the account of the buyer.

[fol. 461]

3-26-46 #6594
3-28-46

5353
5-7-46
3866

THE SHOTWELL MFG. CO.
3501 W. POTOMAC AVE.
CHICAGO, ILLINOIS (51)

SAME

IF POSSIBLE-SELLERS OPTION
KEOKUK

GATX 12167
VIA CB&Q-BRC-CMSTP CHICAGO
2,[illegible] NET .1

~~THE HUBINGER CO.~~
~~CHICAGO~~

29
~~3.09 CAT.~~

222.60
~~2904.60~~

[illegible] CAP 43# UK CORN SYRUP UNMIXED
133700#...39700#...94000#

~~(MARKET PRICE RATE OF SHIPMENT)~~

67-3

[fol. 462]

DEFENDANTS' EXHIBIT 67K

THE HUBINGER CO.

PURE CORN PRODUCTS — KEOKUK, IOWA — ESTABLISHED 1881

TYPED BY _____ CHECKED BY _____

EXTENDED BY _____ CHECKED BY _____

☐ CONFIRMATIONS

☐ WAREHOUSE DELIVERY ORDER NOTIFICATION OF SHIPMENT

LOADING TICKETS: 3 | 4 | 5 | 6 | 7 | 8

INVOICE: CUSTOMER'S COPY: 1 | 2 | 3 | 4 | 5 | 6

TOMER'S ER & DATE E ENTERED: 3-26-46 3-28-46 #6599

REFER TO INVOICE NO. 6887
INVOICE DATE 5-27-46
ORDER NO. 3867

OLD TO: THE SHOTWELL MFG. CO.
3501 W. POTOMAC AVE.
CHICAGO 51, ILLINOIS

HIP TO: SAME

HIP WHEN AR INITIALS OW SHIPPED OUTE VIA CB&Q-BRE-CMSTP
TERMS. 2% 10 NET 11

SHIPPED ON INVOICE DATE FROM: KEOKUK
F.O.B. CHICAGO

PAY BROKER: THE HUBINGER CO. CHICAGO
SALESMAN

UNITS	SIZE CASE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK ELASTIC STARCH			
1		TANK CAR 43° OK CORN SYRUP ADMIXED 943600# 135760#..[illegible]	3.09 CWT.		2915.72

(MARKET PRICE DATE OF SHIPMENT)

OUR RECORDS ONLY.
CHARGE CORN DEAL

67-K

NOTICE
See additional charge issued for price adjustment effective April 11, 1946.

Feb 19 1954

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

O46-30M-2-45

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or other charges levied or imposed by the Government on the product herein sold, or any component part thereof, will be for the account of the buyer

[redacted]

[redacted] DEPARTMENT CO[redacted] MAST[redacted]

THE HUBINGER C[redacted]

PEOKUK, IOWA

PURE CORN PRODUCTS

CUSTOMER'S ORDER & DATE
DATE ENTERED

REFER TO INVOICE NO. [redacted]563
INVOICE DATE 9-3-46
ORDER NO.

[ ] CONFIRMATIONS

[ ] WAREHOUSE DELIVERY ORDER
NOTIFICATION OF SHIPMENT

SOLD TO
The Shotwell Mfg. Co.
3501 W. Potomac Avenue
Chicago 51, Illinois

SHIP TO

SHIP WHEN
CAR INITIALS
HOW SHIPPED
ROUTE

SHIPPED ON INVOICE DATE FROM

F O B

TERMS. 2% 10 Net 11

[redacted] TICKETS

3 4 5 6 7 8

INVOICE CUSTOMER'S COPY

1 2 3 4 5 6

PAY BROKER

SALESMAN

UNITS	SIZE CASE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK ELASTIC STARCH			
		Additional charge on our invoice #6287 of 5-27-46			
1		tank car 43° OK Corn Syrup Unmixed 94360# 135760#...41400#	.68 cwt.		641.65

67-K-2

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

[illegible] 30M-2-45

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or other charges levied or imposed by the Government on the product herein sold, or any component part thereof, will be for the account of the buyer.

400

[fol. 464]

~~3-26-46~~ ~~#6599~~
~~3-26-46~~

6287
5-27-46
3067

THE SHOTWELL MFG. CO.
3501 W. POTOMAC AVE.
CHICAGO 51, ILLINOIS

~~SAME~~

~~KEOKUK~~

~~GATN 4140~~
~~VIA CB&Q-BRS-GMOTP~~
2% 10 NET 11

~~CHICAGO~~

~~THE HUBINGER CO.~~
~~CHICAGO~~

68

TANK CAR 43° OK CORN SYRUP UNMIXED 94360#
135760#..41400#

~~3.09~~ CWT.

641.65
~~2915.72~~

~~(MARKET PRICE DATE OF SHIPMENT)~~

67-K-3

[fol. 465]

DEFENDANTS' EXHIBIT 67L

BILLING DEPARTMENT COPY MASTER

THE HUBINGER CO.

PURE CORN PRODUCTS **KEOKUK, IOWA** ESTABLISHED 1881

TYPED BY _____ CHECKED BY _____

EXTENDED BY _____ CHECKED BY _____

☐ CONFIRMATIONS

☐ WAREHOUSE DELIVERY ORDER NOTIFICATION OF SHIPMENT

CUSTOMER'S ORDER & DATE 6-5-46 #6094
DATE ENTERED 6-5-46

REFER TO INVOICE NO. 6935
INVOICE DATE 6-8-46
ORDER NO. 6185

SOLD TO: THE SHOTWELL MFG. CO.
3501 W. POTOMAC AVE.
CHICAGO 51, ILLINOIS

SHIP TO: SAME

SHIP WHEN: SOON AS POSSIBLE-SELLERS OPTION

CAR INITIALS HOW SHIPPED: BRIE 77136

ROUTE: VIA [illegible]

SHIPPED ON INVOICE DATE FROM: KEOKUK

F.O.B. CHICAGO

TERMS: 8% 10 NET 11

LOADING TICKETS: 3 4 5 6 7 8

INVOICE: CUSTOMER'S COPY: 1 2 3 4 5 6

PAY BROKER: THE HUBINGER CO. CHICAGO

SALESMAN

UNITS	SIZE CASE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK ELASTIC STARCH			
1	CARLOAD				
70	BBLS.	43° HI-SHEET 52671#....47560#...47915#	3.91 CWT.		1873.48
		(MARKET PRICE DATE OF SHIPMENT)			

OUR RECORDS ONLY,
CHARGE CORN DEAL

67-L

NOTICE
See additional charge issued for price adjustment effective April 11, 1946.

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

O46-30M-2-45

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or other charges levied or imposed by the Government on the product herein sold, or any component part thereof, will be for the account of the buyer.

[redacted]

THE HUBINGER CO.

PURE CORN PRODUCTS **KEOKUK, IOWA** ESTABLISHED 1881

CUSTOMER'S ORDER & DATE
DATE ENTERED

REFER TO INVOICE NO. 8-0460
INVOICE DATE 8-3-46
ORDER NO.

SOLD TO
THE SHOTWELL MFG. CO.
3501 E. POTOMAC AVE.
CHICAGO 51 ILLINOIS.

SHIP TO

SHIP WHEN
CAR INITIALS
HOW SHIPPED
ROUTE

SHIPPED ON INVOICE DATE FROM

F.O.B.

TERMS 2% 10 net 11

TYPED BY _____ CHECKED BY _____
EXTENDED BY _____ CHECKED BY _____

☐ CONFIRMATIONS

☐ WAREHOUSE DELIVERY ORDER
NOTIFICATION OF SHIPMENT

LOADING TICKETS

3	4	5	6	7	8

INVOICE: CUSTOMER'S COPY

1	2	3	4	5	6

PAY BROKER

SALESMAN

UNITS	SIZE CASE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK ELASTIC STARCH Additional charge on our invoice # 6935 of 6-3-46			
1 carload					
70	bbls.	48' HI-SWEET 52671#--4706#--47915#	.68 cwt.		325.82

676.2

466

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

1146-30M-2-45

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or other charges levied or imposed by the Government on the product herein sold, or any component part thereof, will be for the account of the buyer.

[fol. 467]

~~6-5-46~~ ~~#6094~~ 6935
~~6-5-46~~ 6-8-46
6185

THE SHOTWELL MFG. CO.
3501 W. POTOMAC AVE.
CHICAGO 51, ILLINOIS

~~NAME~~

~~SOON AS POSSIBLE-SELLERS OPTION~~

~~ERIE 77136~~ ~~KEOKUK~~
VIA ~~CB&Q-BRG-CMSTP~~ CHICAGO THE ~~HUBINGER CO.~~
2% 10 NET 11 ~~CHICAGO~~

1 CARLOAD

70 BLS. 43° HI-SWEET 68 325.82
52671#....4756# 47915# 3.91 CWT. ~~1879.40~~

~~(MARKET PRICE DATE OF SHIPMENT)~~

67L-3

[fol. 468]

DEFENDANTS' EXHIBIT 67M

[redacted]

THE HUBINGER CO.

PURE CORN PRODUCTS **KEOKUK, IOWA** ESTABLISHED 1881

CUSTOMER'S ORDER & DATE L 6-5-46 #6894
DATE ENTERED 6-5-46

REFER TO INVOICE NO. 7261
INVOICE DATE 6-12-46
ORDER NO 6186

SOLD TO THE SHOTWELL MFG. CO.
3508 W. POTOMAC AVE.
CHICAGO 51, ILLINOIS

SHIP TO SAME

SHIP WHEN SOON AS POSSIBLE
CAR INITIALS SELLERS OPTION
HOW SHIPPED CG 4068
ROUTE VIA CRAO-DBC-CMSTP
TERMS. 2% TO NET TT

SHIPPED ON INVOICE DATE FROM KEOKUK
F.O.B. CHICAGO

TYPED BY ___ CHECKED BY ___
EXTENDED BY ___ CHECKED BY ___

☐ CONFIRMATIONS

☐ WAREHOUSE DELIVERY ORDER
NOTIFICATION OF SHIPMENT

LOADING TICKETS

3	4	5	6	7	8

INVOICE: CUSTOMER'S COPY

1	2	3	4	5	6

PAY BROKER THE HUBINGER CO.
CHICAGO

SALESMAN

UNITS	SIZE CASE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK ELASTIC STARCH			
1	CARLOAD				
69	BBLS.	43° [illegible] 51709#...4551#...47158#	3.91 CWT.		1843.88
		(MARKET PRICE DATE OF SHIPMENT)			

OUR RECORDS ONLY,
CHARGE CORN DEAL

67-A

NOTICE
See additional charge issued for price adjustment effective April 11, 1946.

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

468

016-30M-2-45

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or other charges levied or imposed by the Government on the product herein sold, or any component part thereof, will be for the account of the buyer.

[fol 469]

THE HUBINGER CO.

PURE CORN PRODUCTS **KEOKUK, IOWA** ESTABLISHED 1881

CUSTOMER'S ORDER & DATE
DATE ENTERED

REFER TO INVOICE NO. 8-8461
INVOICE DATE 8-3-46
ORDER NO.

SOLD TO
The Shotwell Mfg. Co.
3501 W. Potomac Ave.
Chicago, 51, Illinois.

SHIP TO

SHIP WHEN
CAR INITIALS
HOW SHIPPED
ROUTE
2 10 net 11
TERMS.

SHIPPED ON INVOICE DATE FROM
F.O.B.

TYPED BY _____ CHECKED BY _____
EXTENDED BY _____ CHECKED BY _____

☐ CONFIRMATIONS

☐ WAREHOUSE DELIVERY ORDER NOTIFICATION OF SHIPMENT

LOADING TICKETS

3	4	5	6	7	8

INVOICE: CUSTOMER'S COPY

1	2	3	4	5	6

PAY BROKER

SALESMAN

UNITS	SIZE CASE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK ELASTIC STARCH Additional charge on our invoice # 7288 of 6-13-46			
1	carload				
60	bbls.	43' HI-SHEET 51709# --4581#--47158#	.68 cwt.		$30.67

67M-2

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

4346-30M-2-45

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty tax or other charges levied or imposed by the Government on the product herein sold, or any component part thereof, will be for the account of the buyer.

[fol. 470]

~~6-5-46~~ ~~#6894~~
~~6-5-46~~

7268
6-12-46
6186

THE SHOTWELL MFG. CO.
3501 W. POTOMAC AVE.
CHICAGO 51, ILLINOIS

~~SAME~~

~~SOON AS POSSIBLE~~
~~SELLERS OPTION~~
~~CC 4008~~
~~VIA [illegible]~~
2% TO NET TT

~~KEOKUK~~
~~CHICAGO~~

~~THE HUBINGER CO.~~
~~CHICAGO~~

1 CARLOAD

69 BBLS. 43° HI-SWEET
51709#...4551#...47158#

68
~~3.91~~ CWT. 320.67 ~~1045.88~~

~~(MARKET PRICE DATE OF SHIPMENT)~~

406 - 95 lie

67 M-3

[fol. 471]

DEFENDANT'S EXHIBIT 67N

BILLING DEPARTMENT COPY - MASTER

THE HUBINGER CO.

PURE CORN PRODUCTS — KEOKUK, IOWA — ESTABLISHED 1881

CUSTOMER'S ORDER & DATE L 4-30-46 #6889
DATE ENTERED 5-2-46

REFER TO INVOICE NO. 7972
INVOICE DATE 6-24-46
ORDER NO. 5128

SOLD TO: THE SHOTWELL MFG. CO.
3501 S. POTOMAC AVE.
CHICAGO 51, ILLINOIS

SHIP TO: SAME

SHIP WHEN
CAR INITIALS GATX 25080
HOW SHIPPED
ROUTE VIA CB&Q-BRC-CMSTP
TERMS. 2% 10 NET 11

SHIPPED ON INVOICE DATE FROM KEOKUK
F.O.B. CHICAGO

TYPED BY _____ CHECKED BY _____
EXTENDED BY _____ CHECKED BY _____
☐ CONFIRMATIONS
☐ WAREHOUSE DELIVERY ORDER NOTIFICATION OF SHIPMENT

LOADING TICKETS
3 | 4 | 5 | 6 | 7 | 8

INVOICE CUSTOMER'S COPY
1 | 2 | 3 | 4 | 5 | 6

PAY BROKER THE HUBINGER CO. CHICAGO
SALESMAN

UNITS	SIZE CASE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK ELASTIC STARCH			
1		TANK CAR 43° OK CORN SYRUP UNMIXED 136700...42400#...94300#	3.09 CWT		8913.87
		(MARKET PRICE DATE OF SHIPMENT)			

OUR RECORDS ONLY:
CHARGE CORN DEAL

67-N

NOTICE
See additional charge issued for price adjustment effective April 11, 1946.

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or levy imposed by the Government on the product hereinsold, or any component part thereof, will be for the account of the buyer.

[fol. 472]

THE HUBINGER CO.

PURE CORN PRODUCTS — KEOKUK, IOWA — ESTABLISHED 1901

CUSTOMER'S ORDER & DATE
DATE ENTERED L

REFER TO INVOICE NO. S-2527
INVOICE DATE 8/2-46
ORDER NO.

SOLD TO THE SHOTWELL MANUFACTURING CO.
3501 W. POTOMAC AVE.,
CHICAGO 51, ILLINOIS

SHIP TO

SHIP WHEN
CAR INITIALS
HOW SHIPPED
ROUTE

SHIPPED ON INVOICE DATE FROM

F. O. B.

TERMS. 2% 10 NET 11

TYPED BY _____ CHECKED BY _____

EXTENDED BY _____ CHECKED BY _____

☐ CONFIRMATIONS

☐ WAREHOUSE DELIVERY ORDER
NOTIFICATION OF SHIPMENT

LOADING TICKETS

3	4	5	6	7	8

INVOICE: CUSTOMER'S COPY

1	2	3	4	5	6

PAY BROKER

SALESMAN

UNITS	SIZE CASE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK ELASTIC STARCH			
		ADDITIONAL CHARGE ON OUR INVOICE #7992 of 6/24/46			
1	TANK CAR	43° DE CORN SYRUP UNMIXED 13870#....42400#...94300#	.68 CWT.		$641.24

67-N-2

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

O46-30M-3-48

472

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or other charge levied or imposed by the Government on the product herein sold, or any component part thereof, will be for the account of the buyer.

[fol. 473]

~~4-30-46 — #6009~~
~~5-2-46~~

7972
6-24-46
5122

THE SHOTWELL MFG. CO.
3501 W. POTOMAC AVE.
CHICAGO 51, ILLINOIS

~~SAME~~

~~CATH 25080~~
~~VIA CBAD-BBC SMOTP~~
2% 10 NET 11

~~KEOKUK~~
~~CHICAGO~~

~~THE HOBINGER CO.~~
~~CHICAGO~~

68
~~3.09~~ CWT

641.24
~~2915.07~~

TANK CAR 43° DK CORN SYRUP UNMIXED
13670#...42400#...94300#

(~~MARKET PRICE DATE OF SHIPMENT~~)

67N-3

[fol. 474]

DEFENDANTS' EXHIBIT 67 O

[redacted]

THE HUBINGER CO.

PURE CORN PRODUCTS **KEOKUK, IOWA** ESTABLISHED 1881

CUSTOMER'S ORDER & DATE 5-31-46 #7000
DATE ENTERED 7-19-46

REFER TO INVOICE NO. 9143
INVOICE DATE 7-21-46
ORDER NO. 7469

SOLD TO: THE SHOTWELL MFG. CO.
3501 W. POTOMAC AVE.
CHICAGO 51, ILLINOIS

SHIP TO: SAME

SHIP WHEN
CAR INITIALS NOW SHIPPED GATX 12167
ROUTE VIA CB&Q-BRS-CMSTP
TERMS. 2% 10 NET 11

SHIPPED ON INVOICE DATE FROM KEOKUK
F.O.B. CHICAGO

TYPED BY ____ CHECKED BY ____
EXTENDED BY ____ CHECKED BY ____

☐ CONFIRMATIONS

☐ WAREHOUSE DELIVERY ORDER NOTIFICATION OF SHIPMENT

LOADING TICKETS

3	4	5	6	7	8

INVOICE: CUSTOMER'S COPY

1	2	3	4	5	6

PAY BROKER THE HUBINGER CO.
CHICAGO

SALESMAN

UNITS	SIZE CASE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK ELASTIC STARCH			
1		TANK CAR 43° OK CORN SYRUP UNMIXED 94080# 133780#...39700#	3.77 CWT.		3546.32

CMR RECORDS ONLY:
CHARGE CORN DEAL

67-0 ✓

APPLIED & COMPLETES BOOKING
7-19-46

22 CA 14.3

NOTICE
See additional charge issued for price adjustment effective April 11, 1946.

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

046-30M-2-45

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or other charge levied or imposed by the Government on the product herein sold, or any component part thereof, will be for the account of the buyer.

THE HUBINGER CO.

KEOKUK, IOWA

ESTABLISHED 1881

[illegible] 7-19-46

REFER TO INVOICE NO.
INVOICE DATE
ORDER NO. 7469

SOLD TO [illegible]

SHIP TO [illegible]

[illegible] KEOKUK

F.O.B. [illegible]

TERMS [illegible]

TYPED BY _____ CHECKED BY _____

EXTENDED BY _____ CHECKED BY _____

☐ CONFIRMATIONS

☐ WAREHOUSE DELIVERY ORDER NOTIFICATION OF SHIPMENT

LOADING TICKETS

3	4	5	6	7	8

INVOICE: CUSTOMER'S COPY

1	2	3	4	5	6

PAY [illegible] THE [illegible]

SALESMAN

[illegible]	[illegible]	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		3.77 [illegible]			

CHECK [illegible] STARCH

1 [illegible]

~~[illegible]~~

[illegible]

Show/ Applies & Completes Booking
7-19-46

67-0-2

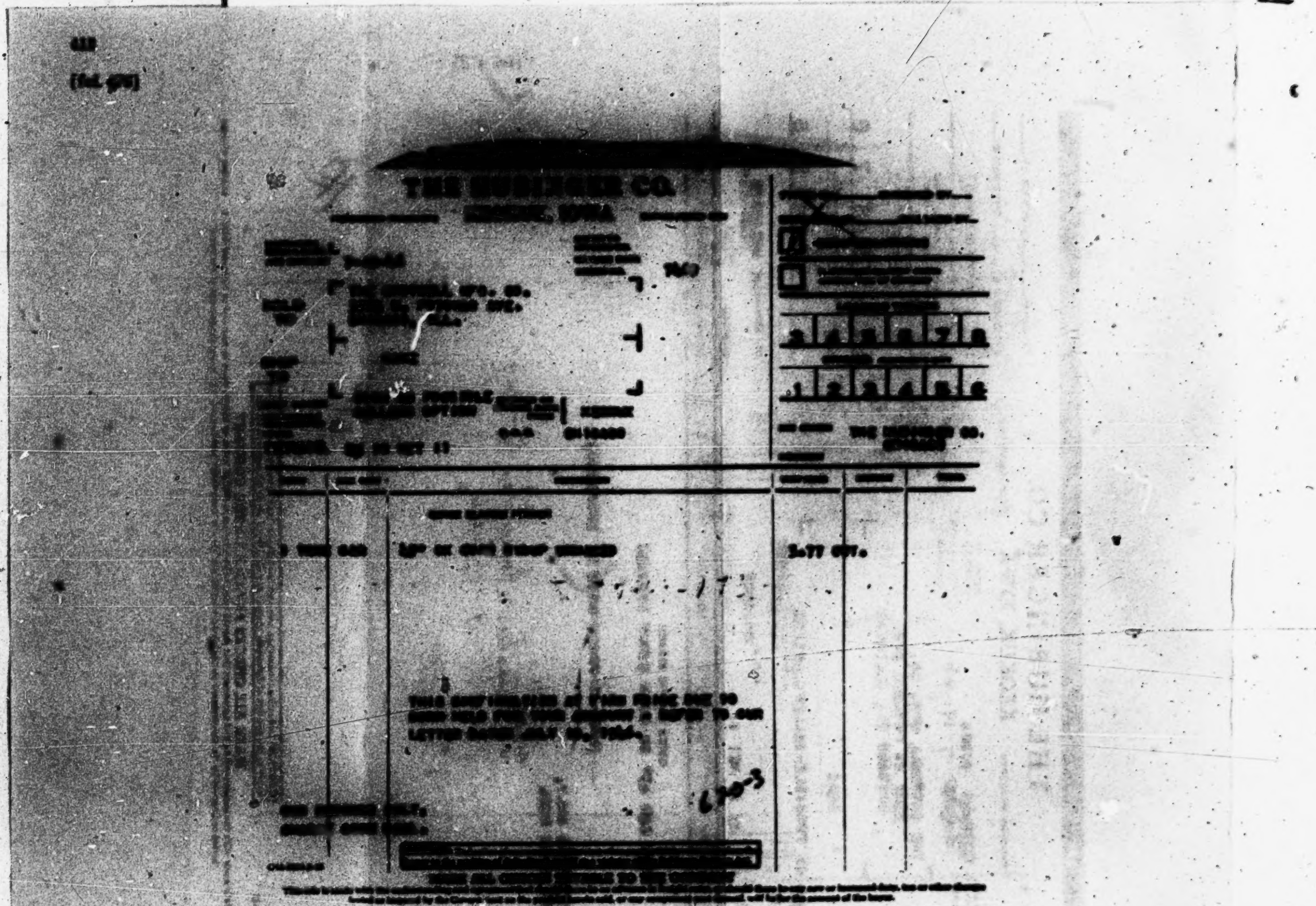
[illegible]

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or other charges levied or imposed by the Government on the product herein sold, or any component part thereof, will be for the account of the buyer.

[fol. 475]



[fol. 477]

DEFENDANTS' EXHIBIT 67P

[redacted]

THE HUBINGER CO.

PURE CORN PRODUCTS — KEOKUK, IOWA — ESTABLISHED 1901

CUSTOMER'S ORDER & DATE ENTERED L [illegible] #7077

REFER TO INVOICE NO. 9456
INVOICE DATE 7-26-46
ORDER NO. 6079

SOLD TO: THE SHOTWELL MFG. CO.
3901 W. POTOMAC AVE.
CHICAGO 51, ILLINOIS

SHIP TO: SAME

SHIP WHEN AIR INITIALS GATX 3030
ROUTE VIA [illegible]
TERMS. [illegible] 10 NET 11

SHIPPED ON INVOICE DATE FROM: KEOKUK
F.O.B. CHICAGO

TYPED BY ____ CHECKED BY ____
EXTENDED BY ____ CHECKED BY ____

☐ CONFIRMATIONS

☐ WAREHOUSE DELIVERY ORDER NOTIFICATION OF SHIPMENT

LOADING TICKETS: 3 | 4 | 5 | 6 | 7 | 8

INVOICE: CUSTOMER'S COPY: 1 | 2 | 3 | 4 | 5 | 6

PAY BROKER THE HUBINGER CO. CHICAGO

SALESMAN

UNITS	SIZE CASE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK ELASTIC STARCH			
1		TANK CAR 45" OK CORN SYRUP UNMIXED 94700# 136000#...42100#	5.17 CWT.		4900.13
		(MARKET PRICE DATE OF SHIPMENT)			

OUR RECORDS ONLY:
CHARGE CORN DEAL.

52 R143

FILED
FEB 10 1954
AT ..... O'CLOCK .....
ROY H. JOHNSON
CLERK

67-P ✓

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

O46-3004-3-45

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or other char[illegible] component part thereof, will be for the account of the buyer.

BILLING DEPARTMENT COPY NO. 1

THE HUBINGER CO.

PURE CORN PRODUCTS — KEOKUK, IOWA — ESTABLISHED 1841

CUSTOMER'S ORDER & DATE L 5-31-46 $7077
DATE ENTERED 6-4-46

REFER TO INVOICE NO.
INVOICE DATE
ORDER NO. 6079

SOLD TO
THE SHOTWELL MFG. CO.
3801 S. POTOMAC AVE.
CHICAGO 51, ILLINOIS

SHIP TO SAME

SHIP WHEN 7-16-46 IF POSSIBLE-SELLERS OPTION
CAR INITIALS
HOW SHIPPED
ROUTE
INVOICE DATE FROM KEOKUK
F.O.B. CHICAGO

TERMS. 2% 10 NET 11

TYPED BY _____ CHECKED BY _____
EXTENDED BY _____ CHECKED BY _____
☐ CONFIRMATIONS
☐ WAREHOUSE DELIVERY ORDER NOTIFICATION OF SHIPMENT
LOADING TICKETS 3 4 5 6 7 8
INVOICE: CUSTOMER'S COPY 1 2 3 4 5 6
PAY BROKER THE HUBINGER CO. CHICAGO
SALESMAN

UNITS	SIZE CASE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK ELASTIC STARCH			
1		TANK CAR 43° DK CORN SYRUP UNMIXED			
		(MARKET PRICE DATE OF SHIPMENT)			
		OUR RECORDS ONLY. CHARGE CORN DEAL			

67-P-2

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

478

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or other charges levied or imposed by the Government on the product herein sold, or any component part thereof, will be for the account of the buyer.

CREDIT MEMORANDUM
FROM
THE HUBINGER CO.
KEOKUK, IOWA, U. S. A.

8-19-46

THE SHOTWELL MFG. CO.
3501 N. POTOMAC AVE.
CHICAGO 51, ILLINOIS

WE CREDIT YOUR ACCOUNT AS FOLLOWS

ADJUSTMENT IN PRICE, OUR INVOICE #9456 OF JULY 26, 1946

SEE ATTACHED LETTER

8	TANK CAR 43° DK CORN SYRUP UNMIXED 947808 1368868...421808	1.40 CWT.	1326.92

8-117

67-P-3

MASTER

O26-2-44-5M

[fol. 480]

5-31-46 #7077
6-4-46

9456
7-26-46
6079

THE SHOTWELL MFG. CO.
3501 W. POTOMAC AVE.
CHICAGO 51, ILLINOIS

SAME

GATX 3039
VIA WAB-BRC-CMSTP
2% 10 NET 11

KEOKUK

CHICAGO

THE HUBINGER CO.
CHICAGO

TANK CAR 43° OK CORN SYRUP UNMIXED 94780# 5.17 CWT. 4900.13
136880#...42100#

(MARKET PRICE DATE OF SHIPMENT)

1326.92

67-P-4

5.17
3.77
1.40

[fol. 481]

DEFENDANTS' EXHIBIT 67Q

[redacted]

THE HUBINGER CO.

PURE CORN PRODUCTS — KEOKUK, IOWA — ESTABLISHED 1901

CUSTOMER'S ORDER & DATE L 7-31-46 #7410
DATE ENTERED 8-7-46

REFER TO INVOICE NO. 10575
INVOICE DATE 8-12-46
ORDER NO. 8008

SOLD TO: THE BROTWELL MFG. CO.
3501 W. POTOMAC AVE.
CHICAGO 51, ILLINOIS

SHIP TO: SAME

SHIP WHEN
CAR INITIAL AND NO. GATX 7385
HOW SHIPPED
ROUTE ATA CB&Q-SRC-CBSTP
TERMS 2% 10 NET 11

SHIPPED ON INVOICE DATE FROM: KEOKUK
F.O.B. CHICAGO

TYPED BY _____ CHECKED BY _____
EXTENDED BY _____ CHECKED BY _____
☐ CONFIRMATIONS
☐ WAREHOUSE DELIVERY ORDER NOTIFICATION OF SHIPMENT

LOADING TICKETS
3 4 5 6 7 8

INVOICE: CUSTOMER'S COPY
1 2 3 4 5 6

PAY BROKER THE HUBINGER CO. CHICAGO
SALESMAN

UNITS	SIZE CASE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK ELASTIC STARCH			
1		TANK CAR 43° DE CORN SYRUP UNMIXED 94700# 5.21 CWT. 4933.87 135700#...41000#			
		(MARKET PRICE DATE OF SHIPMENT)			

67Q

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

1116-9966-2-48

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or other charge, levied or imposed by the Government on the product herein sold, or any component part thereof, will be for the account of the buyer.

[fol. 482]

DEFENDANTS' EXHIBIT 67R

THE HUBINGER CO.

PURE CORN PRODUCTS — KEOKUK, IOWA — ESTABLISHED 1901

CUSTOMER'S ORDER & DATE L 7-31-46 #7486
DATE ENTERED 8-7-46

REFER TO INVOICE NO. 11783
INVOICE DATE 9-22-46
ORDER NO. 8061

SOLD TO: THE SHOTWELL MFG. CO.
3501 W. POTOMAC AVE.
CHICAGO 51, ILLINOIS

SHIP TO: SAME

CAR INITIALS / HOW SHIPPED / ROUTE: GATX 12167 VIA [illegible]
TERMS. [illegible]

INVOICE DATE FROM: KEOKUK
F.O.B.: CHICAGO

TYPED BY _____ CHECKED BY _____
EXTENDED BY _____ CHECKED BY _____
☐ CONFIRMATIONS
☐ WAREHOUSE DELIVERY ORDER / NOTIFICATION OF SHIPMENT

LOADING TICKETS: 3 4 5 6 7 8
INVOICE: CUSTOMER'S COPY: 1 2 3 4 5 6

PAY BROKER THE HUBINGER CO. CHICAGO
SALESMAN

UNITS	SIZE CASE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK-ELASTIC STARCH			
1		TANK CAR 43° DE CORN SYRUP UNMIXED 93600# 5.21 CWT. 4876.56			
		13330#...39700#			
		(MARKET PRICE DATE OF SHIPMENT)			

67-R

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

O46-3884-2-45

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or other charges levied or imposed by the Government on the product herein sold, or any component part thereof, will be for the account of the buyer.

[fol. 483]

DEFENDANTS' EXHIBIT 67S

THE HUBINGER CO.

PURE CORN PRODUCTS **KEOKUK, IOWA** ESTABLISHED 1891

CUSTOMER'S ORDER & DATE [illegible] #7665
DATE ENTERED [illegible]

REFER TO INVOICE NO. [illegible]
INVOICE DATE [illegible]
ORDER NO. [illegible]

SOLD TO: THE SHOTWELL MFG. CO.
[illegible] W. POTOMAC AVE.
CHICAGO 51, ILLINOIS

SHIP TO: SAME

SHIP WHEN
CAR INITIALS NOW SHIPPED GATX [illegible]
ROUTE VIA [illegible]
TERMS. [illegible] 10 NET 11

SHIPPED ON INVOICE DATE FROM KEOKUK
F.O.B. CHICAGO

TYPED BY ____ CHECKED BY ____
EXTENDED BY ____ CHECKED BY ____

[✓] CONFIRMATIONS

[ ] WAREHOUSE DELIVERY ORDER NOTIFICATION OF SHIPMENT

LOADING TICKETS

3	4	5	6	7	8

INVOICE: CUSTOMER'S COPY

1	2	3	4	5	6

PAY BROKER THE HUBINGER CO. CHICAGO

SALESMAN

UNITS	SIZE CASE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK ELASTIC STARCH			
1		TANK CAR 43° ON CORN SYRUP UNMIXED [illegible] [illegible]	4.36 CWT.		4119.33
		(MARKET PRICE DATE OF SHIPMENT)			

67-S

32CR193

FILED

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

O46-3000-3-48

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or other charges levied or imposed by the Government on the product herein sold, or any component part thereof, will be for the account of the buyer.

[fol. 484]

DEFENDANTS' EXHIBIT 67T

Defendants' Exhibit 67T

THE HUBINGER CO.

PURE CORN PRODUCTS **KEOKUK, IOWA** ESTABLISHED 1881

TYPED BY _____ CHECKED BY _____

EXTENDED BY _____ CHECKED BY _____

☐ CONFIRMATIONS

☐ WAREHOUSE DELIVERY ORDER NOTIFICATION OF SHIPMENT

CUSTOMER'S ORDER & DATE L[illegible] #7[illegible]
DATE ENTERED 10-15-46

REFER TO INVOICE NO. [illegible]
INVOICE DATE [illegible]
ORDER NO. [illegible]

LOADING TICKETS

3	4	5	6	7	8

INVOICE: CUSTOMER'S COPY

1	2	3	4	5	6

SOLD TO: THE SHOTWELL MFG. CO.
3501 W. POTOMAC AVE.
CHICAGO 51, ILLINOIS

SHIP TO: SAME

11-[illegible]-46 IF POSSIBLE-SELLERS OPTION

SHIP WHEN
CAR INITIALS CATX 2[illegible]
HOW SHIPPED
ROUTE VIA C[illegible]-[illegible]-[illegible]TP

SHIPPED ON INVOICE DATE FROM KEOKUK

F.O.B. CHICAGO

TERMS. [illegible] 10 NET 11

PAY BROKER THE HUBINGER CO. CHICAGO

SALESMAN

UNITS	SIZE CASE	DESCRIPTION 3.41 CWT.	UNIT PRICE	AMOUNT	TOTAL
1	TANK CAR 43°	QUICK ELASTIC STARCH OK CORN SYRUP UNMIXED 94000# 137200#...43200#	3.41 CWT.		3205.40

(MARKET PRICE DATE OF SHIPMENT)

5 20 A 1 43

67-T

[fol. 485]

DEFENDANTS' EXHIBIT 67U

THE HUBINGER CO.

PURE CORN PRODUCTS — KEOKUK, IOWA — ESTABLISHED 1900

CUSTOMER'S ORDER & DATE L 10-21-46 #7977
DATE ENTERED 10-23-46

REFER TO INVOICE NO. 13006
INVOICE DATE 11-29-46
ORDER NO. 10624

SOLD TO: THE SHUTWELL MFG. CO.
3501 W. POTOMAC AVE.
CHICAGO 51, ILLINOIS

SHIP TO: SAME

SHIP WHEN: GATX 21674
CAR INITIALS HOW SHIPPED: VIA CBAQ-CBQ-CMSTP
TERMS: 2% 10 NET 11

SHIPPED ON INVOICE DATE FROM: KEOKUK
F. O. B. CHICAGO

TYPED BY _____ CHECKED BY _____
EXTENDED BY _____ CHECKED BY _____
☑ CONFIRMATIONS
☐ WAREHOUSE DELIVERY ORDER NOTIFICATION OF SHIPMENT

LOADING TICKETS: 3 4 5 6 7 8

INVOICE: CUSTOMER'S COPY: 1 2 3 4 5 6

PAY BROKER THE HUBINGER CO. CHICAGO

SALESMAN

UNITS	SIZE CASE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK ELASTIC STARCH			
1	TANK CAR	43° DE CORN SYRUP UNMIXED 95700# 13870#...43000#	3.41 CWT.		3863.37
		(MARKET PRICE DATE OF SHIPMENT)			

67-U

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act.

O-16-7-16-20M

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or other charge levied or imposed by the Government on the product herein sold, or any component part thereof, will be for the account of the buyer.

[fol. 486]

DEFENDANTS' EXHIBIT 67V

[redacted]

THE HUBINGER CO.

PURE CORN PRODUCTS — KEOKUK, IOWA — ESTABLISHED 1864

CUSTOMER'S ORDER & DATE L 11-8-46 $8109
DATE ENTERED 11-5-46

REFER TO INVOICE NO. 16000
INVOICE DATE 12-31-46
ORDER NO. 10722

SOLD TO: THE SHOTWELL MFG. CO.
3501 S. POTOMAC AVE.
CHICAGO 51, ILLINOIS

SHIP TO: SAME

SHIP WHEN
CAR INITIALS OR HOW SHIPPED GATX 25553
ROUTE VIA CB&Q-BBC-CMSTP
TERMS. 2% 10 NET 11

INVOICE DATE FROM KEOKUK
F.O.B. CHICAGO

TYPED BY _____ CHECKED BY _____
EXTENDED BY _____ CHECKED BY _____
☑ CONFIRMATIONS
☐ WAREHOUSE DELIVERY ORDER
NOTIFICATION OF SHIPMENT

LOADING TICKETS
3 | 4 | 5 | 6 | 7 | 8

INVOICE CUSTOMER'S COPY
1 | 2 | 3 | 4 | 5 | 6

PAY BROKER THE HUBINGER CO. CHICAGO

SALESMAN

UNITS	SIZE CASE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
		QUICK ELASTIC STARCH			
1	TANK CAR 45° DE CORN SYRUP UNMIXED 137100#...42600#	94500#	3.41 CWT.		3222.45
		(MARKET PRICE DATE OF SHIPMENT)			

67-V

4 JCR 143

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act

D46-7-46-20M

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or other charge levied or imposed by the Government on the product herein sold, or any component part thereof, will be for the account of the buyer

[fol. 487]

DEFENDANTS' EXHIBIT 67W

BILLING DEPARTMENT COPY — MASTER

THE HUBINGER CO.

PURE CORN PRODUCTS — KEOKUK, IOWA — ESTABLISHED 1869

CUSTOMER'S ORDER & DATE L 11-2-46 #8104
DATE ENTERED 11-5-46

REFER TO INVOICE NO. 15505
INVOICE DATE 12-12-46
ORDER NO. 10721

SOLD TO
THE SHOTWELL MFG. CO.
3501 S. POTOMAC AVE.
CHICAGO 51, ILLINOIS

SHIP TO SAME

SHIP WHEN
CAR INITIALS NOW SHIPPED GATX 2147
ROUTE VIA CB&Q-ERC-CMSTP
TERMS. 2% 10 NET 11

SHIPPED ON INVOICE DATE 12 FROM KEOKUK
F.O.B. CHICAGO

TYPED BY _____ CHECKED BY _____
EXTENDED BY _____ CHECKED BY _____
☐ CONFIRMATIONS
☐ WAREHOUSE DELIVERY ORDER NOTIFICATION OF SHIPMENT

LOADING TICKETS
3 4 5 6 7 8

INVOICE, CUSTOMER'S COPY
1 2 3 4 5 6

PAY BROKER THE HUBINGER CO. CHICAGO

SALESMAN

UNITS	SIZE CASE	DESCRIPTION	UNIT PRICE	AMOUNT	TOTAL
1	TANK CAR	43° QK CORN SYRUP UNMIXED QUICK ELASTIC STARCH 94080# 43260#	3.41 CWT.		3208.13

(MARKET PRICE DATE OF SHIPMENT)

4-JCK-43

67-W

CAUTION: Deduction of unearned cash discount when paying this invoice may place the buyer in the position of defending himself as a violator of the Robinson-Patman Act

MAKE ALL CHECKS PAYABLE TO THE COMPANY

This sale is made with the understanding and agreement that should there be an advance in freight rates, or should there be any new or increased duty, tax or other charge levied or imposed by the Government on the product herein sold or any component part thereof, will be for the account of the buyer

[fol. 488]

DEFENDANTS' EXHIBIT 69

Shotwell Manufacturing Co.
3501 West Potomac St.
Chicago, Illinois

per AMR - 4/8/
(1 Free - 1 Chge. per Mo

Deal - 15# per Bu.

Corn received
to 3/11/46 - 42521 Bu. - 638715#
" 3/13/46 - 6173 " - 92595

57CR143

Shipments
~~to 3/11/46 - 475460#~~ per AMR 4/8/46
3/8/46 - 94680#
~~4/9/46 - 94800~~
4/12/46 - 60000
4/25/46 - 94900
5/7/46 - 94000
5/27/46 - 94360
6/8/46 - 47915
6/12/46 - 47158
6/24/46 - 94300
7/21/46 - 94080
7/26/46 - 94780

69

Wednesday, Feb. 6, 1946

37th day — 328 days follow

Lowell Hoit Co Book 12 Lay
Cars + 2 z 115 Peoria + 1¼ Atkinson Ill R.J.
8-9
9
4-10

Cargill Cedar Rapids
15 Cars + 2 z Cooling + 2½ [illegible]

Shotwell Candy Co

2708

United Marketing Assn Apply 2709
1 Car + 2 z 103/23 Milford Con
8 Nylon + 1¼ Gmo. 20 [illegible]

Lowell Hoit Co Al. Book
2 Cars + 2 z 112 Chi + 1¼ Mdr Lake 15 Day
Gladden Chicago Forage

Gateway Melling Co Chas. Ethridge 5493
Peoria Ill
4 Cars + 2 z Cars 115 Peoria + 1¼ Gm
Payer Stewart Candy
[illegible] Ill. Chi 12 Peoria 3 [illegible] Rem. 15¼

69A

26

fol. 490]

Thursday, Feb. 7, 1946

38th day — 327 days follow

[fol. 491]

Friday, Feb. 8, 1946

39th day — 326 days follow

[fol. 492]

Monday, Feb. 11, 1946

42nd day — 323 days follow

[fol. 494]

DEFENDANTS' EXHIBIT 70

May 31, 1945

Army Service Forces
Chicago Quartermaster Depot
1819 W. Pershing Road
Chicago, Illinois

Attn: Warrant Officer Reese

Gentlemen:

We are enclosing herewith copies of our orders No. 4592 and No. 4647 which we have been unable to place with the American Maize Products Co. and A. E. Staley Mfg. Co.

On order No. 4592 calling for 200,000 pounds of 71g% Redried Starch, the Staley Mfg. Co. have accepted only 80,000 pounds.

We would appreciate very much your assistance in getting these two orders placed as we are going to be badly in need of these raw materials in order to complete Contract No. W-11-009 QM-48398 within the specified time.

Yours very truly,

THE SHOTWELL MFG. CO.

Sales Manager

J.B.Kelly:ld

[fol. 495]

DEFENDANTS' EXHIBIT 71

June 27, 1945

Army Service Forces
Chicago Quartermaster Depot
1819 W. Pershing Road
Chicago 9, Illinois

Attn: Mr. A. W. Nygren

Gentlemen:

With reference to Contract No. W11-009-qm-48398 covering Starch Dessert Powder.

Owing to the fact that it is necessary for us to substitute 100,000 pounds beet sugar in place of corn sugar in order to complete above contract, we will require additional sugar certificates covering 100,000 pounds sugar.

Would appreciate it if you would forward these ration points to us at once.

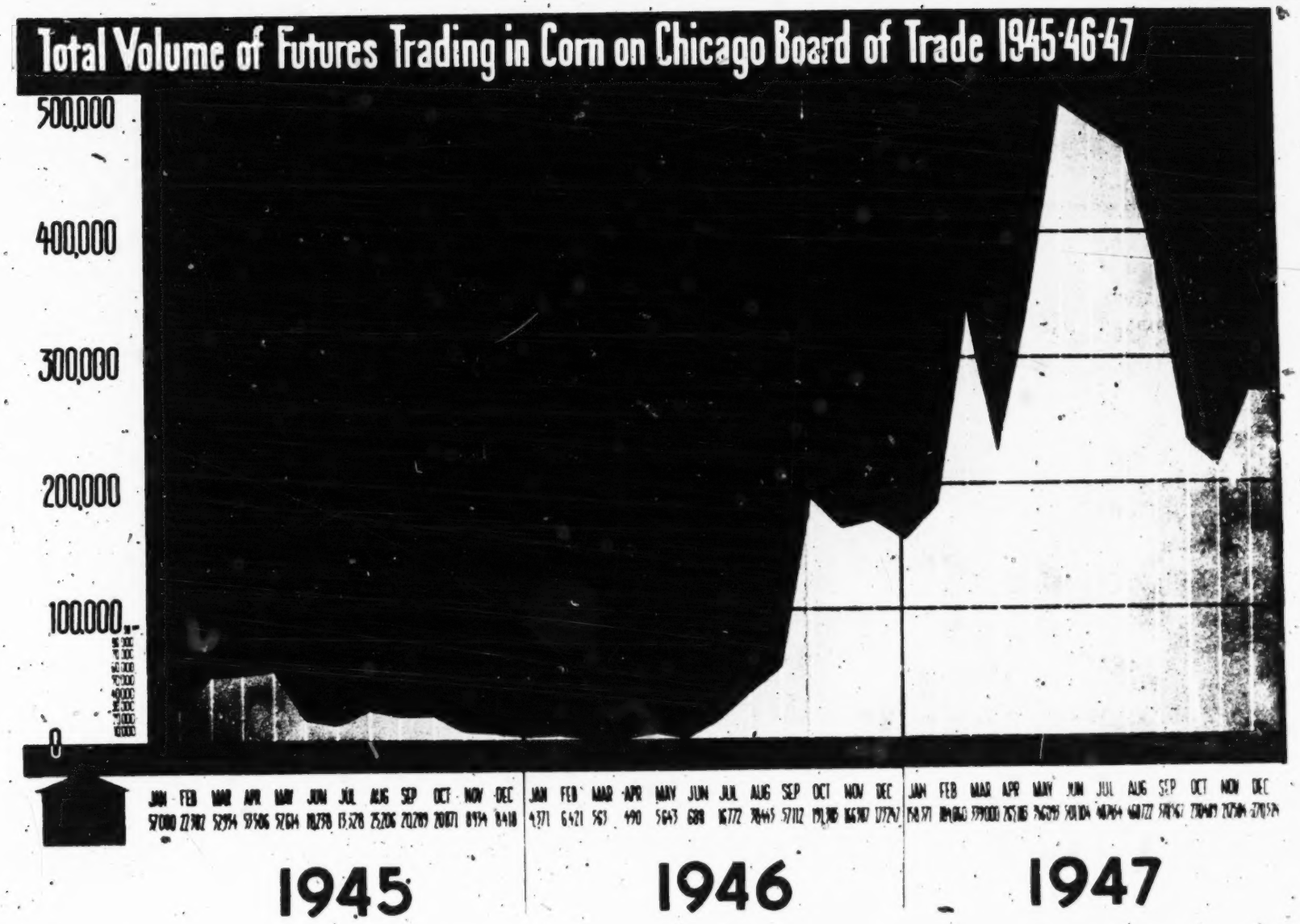
Yours very truly,
THE SHOTWELL MFG. CO.

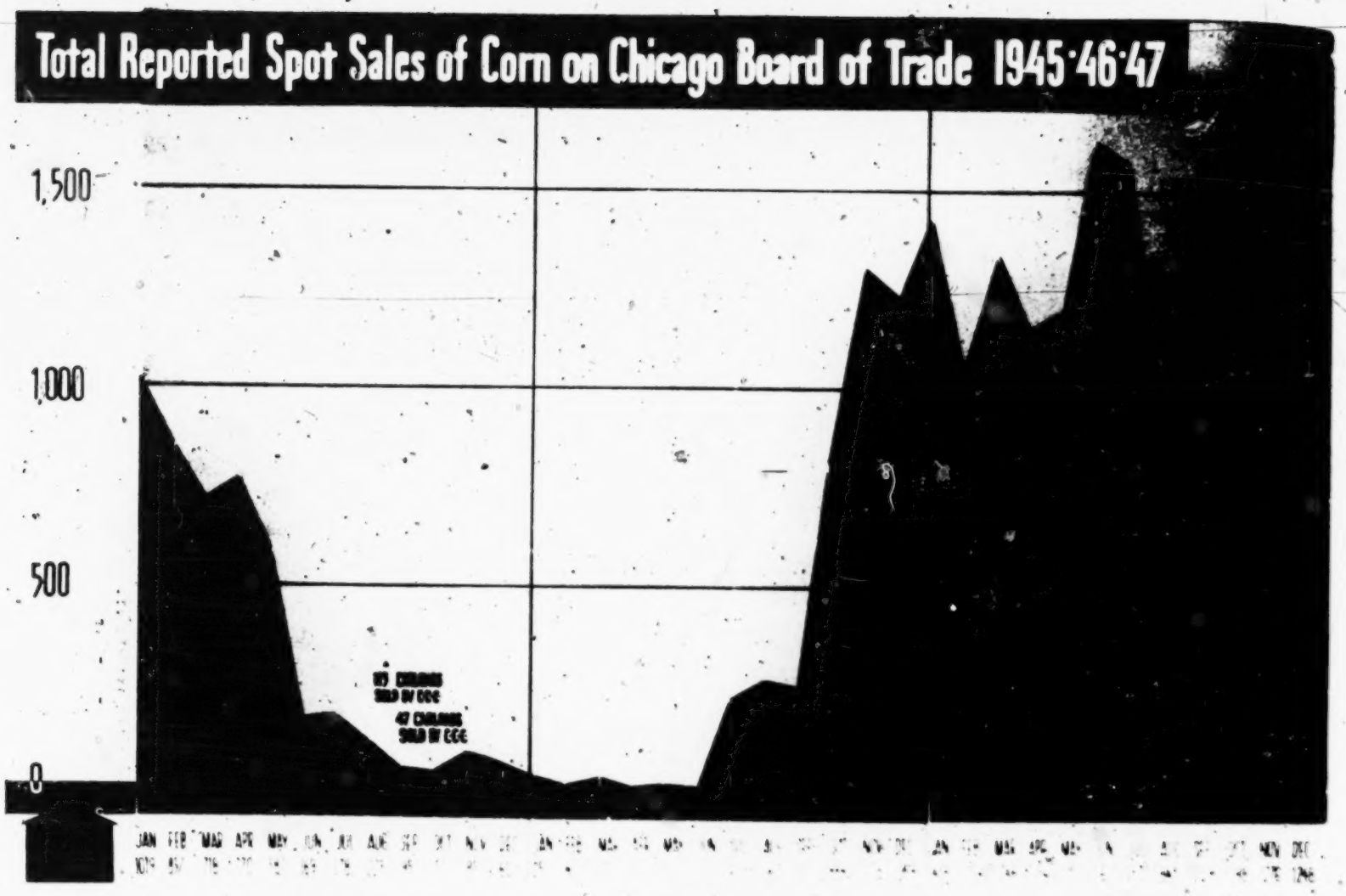
Sales Manager

J.B.Kelly:ld

[fol. 496]

DEFENDANTS' EXHIBIT 72




Total Reported Spot Sales of Corn on Chicago Board of Trade 1945-46-47
1,500
1,000
500
0
1945
1946
1947

[fol. 498]

DEFENDANTS' EXHIBIT 74

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE

No. 532

THE NATIONAL ARCHIVES

[Emblem]

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I CERTIFY That the annexed copy, or each of the specified number of annexed copies, of each document listed below is a true copy of a document in the official custody of the Archivist of the United States.

FROM THE RECORDS OF THE OFFICE OF WAR MOBILIZATION AND RECONVERSION:

Office of Economic Stabilization
(Directive 106)
EMERGENCY CORN PURCHASE PROGRAM
Issued and effective April 19, 1946

IN TESTIMONY WHEREOF, I, WAYNE C. GROVER, Archivist of the United States, have hereunto caused the Seal of the National Archives to be affixed and my name subscribed by the Chief Archivist, Industrial Records Branch of the National Archives, in the District of Columbia, this 13th day of March 1953.

/s/ WAYNE C. GROVER
Archivist of the United States

By /s/ (Signature illegible)

[Seal]

GSA Form 86
August 1950
(Formerly NA 42)

[fol. 499]

Chapter XVIII—Office of Economic Stabilization

[Directive 106]

Part 4003—Support Prices; Subsidies

EMERGENCY CORN PURCHASE PROGRAM

Pursuant to the authority vested in me by the Stabilization Act of 1942, as amended, and by Executive Order 9250 of October 3, 1942 (7 F.R. 7871), Executive Order 9328 of April 8, 1943 (8 F.R. 4681), Executive Order 9599 of August 18, 1945 (10 F.R. 10155), Executive Order 9651 of October 30, 1945 (10 F.R. 13487), Executive Order 9697 of February 14, 1946 (11 F.R. 1691), and Executive Order 9699 of February 21, 1946 (11 F.R. 1929), *It is hereby ordered*:

The Secretary of Agriculture is hereby authorized and directed, through the Commodity Credit Corporation, to purchase approximately 50,000,000 bushels of corn at prices 30 cents above the applicable maximum prices under the regulations of the Office of Price Administration and to resell such corn for export, for the manufacture of corn products as specified by the Secretary of Agriculture, and for such other purposes as will be effective in directly alleviating the famine emergency. Such purchases shall be made only from producers eligible for loans under the 1945 Corn Loan Program.

Issued and effective this 19th day of April, 1946.

.....

Economic Stabilization Director

/s/ LILLIAN C. VAZZI

[Stamp—Illegible]

OUR NO. _____ SELLERS NO. _____

DATE [illegible]

D. F. [illegible]

INSP WEIGHTS	

AMOUNT	GRADE	PRICE	[illegible]	SHIPMENT	REMARKS
[illegible]					

EXPIRES _____

APPLICATIONS

DATE	CAR NO.	WEIGHT FACTORY	WEIGHT SELLERS	GRADE	PRICE	REMARKS	ADVANCES DATE	ADVANCES AMOUNT
[illegible]	761364				104 3/4	4 5/8		[illegible]
		Less 1¢ cwt plus tax						
						[illegible]		

Defendants Exhibit 75 A

[illegible] - Official Court Reporter

DEFENDANTS' EXHIBIT 75A

[fol. 501]

WE CONFIRM SALE TO YOU

DANIEL F. RICE & CO.

NO. [illegible]

CAR NO.	ROAD	INITIAL	GRADE
701364	NW	Nel	rye

TEST WT. 47.5	SPLITS
MOISTURE 22.3	F. M. Kinnick [illegible]
DGE. 25	OTHER FACTORS 503

SOLD TO	PRICE	TERMS
CP		

DISPOSITION

CITY CONT.	PREMIUM	DISCOUNT
47.5		14 [illegible]

DATE	REMARKS
7/4/[illegible]	OK

14 1/2 [illegible] Harcourt

75-B.

Ja

TN

FORM 1991

OUR NO. [illegible]

SELLERS NO. [illegible]

[illegible] F

Defendants' Exhibit 75B

DATE [illegible]

75 B

INSP. WEIGHTS	
✓	

AMOUNT	GRADE	PRICE	BASIS	SHIPMENT	REMARKS
[illegible]	2 Y	[illegible]	Lake	By 9/30/46	Grand Ridge Co. [illegible] Scale [illegible]

EXPIRES

2L

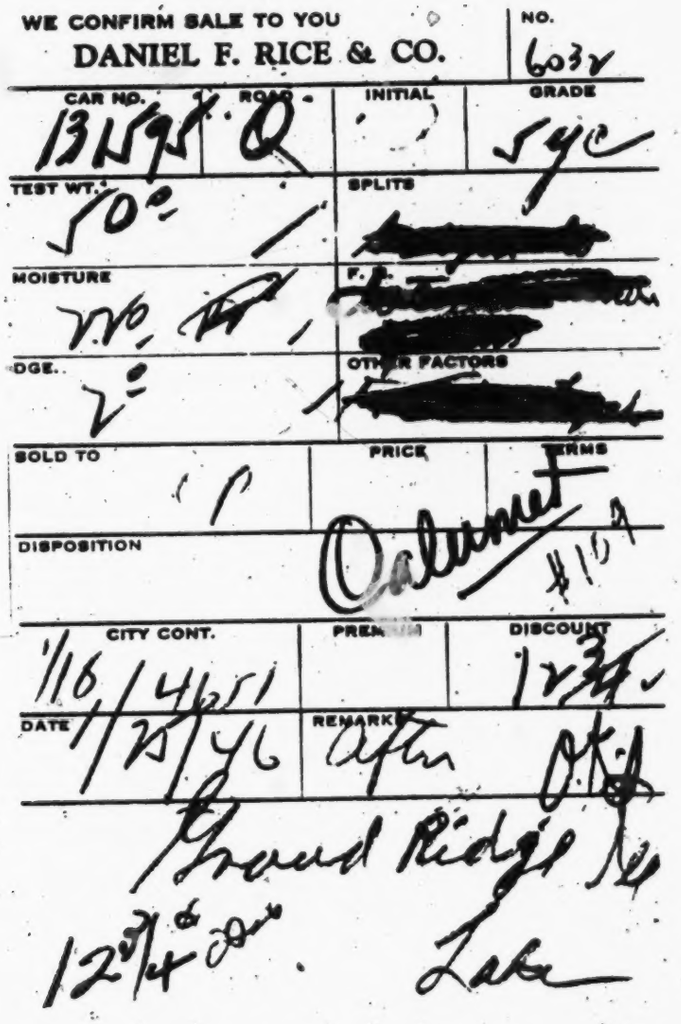
APPLICATIONS

DATE	CAR NO	WEIGHT FACTORY	WEIGHT SELLERS	GRADE	PRICE	REMARKS	ADVANCES DATE	ADVANCES AMOUNT
		To Dickinson						
[illegible]	35135	76	1624 64	[illegible]	[illegible]			[illegible]
[illegible]	[illegible]	76	1636 [illegible]	[illegible]	[illegible]	[illegible]	[illegible]	
[illegible]	[illegible]	76	1534 47	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	132135			213 5	1.67½	[illegible] 10 11d	[illegible]	

Cars 33245 } Trans to Dickinson
13,595 } [illegible]
71984 } [illegible]

Cars 35135 } Trans to Stratton
[illegible]
[illegible]

[fol. 504]



WE CONFIRM SALE TO YOU
DANIEL F. RICE & CO.

NO. 6032

CAR NO.	ROAD	INITIAL	GRADE
131595	Q		5 yc

TEST WT.	SPLITS
50	[redacted]

MOISTURE	F. B.
2.0	[redacted]

DGE.	OTHER FACTORS
2	[redacted]

SOLD TO	PRICE	TERMS

DISPOSITION Calumet #109

CITY CONT.	PREMIUM	DISCOUNT
1/16 / 4651		12 3/4

DATE	REMARKS
1/25/46	After OK

Grand Ridge Ill
12 3/4 Lake

CURTIS-SPOT PAT. 1,961,880 CURTIS 1000 INC.

WE CONFIRM SALE TO YOU

DANIEL F. RICE & CO.

NO. 553

CAR NO.	ROAD	INITIAL	GRADE
33245	Q	TN	Rye

TEST WT.	SPL[illegible]
51°	[redacted]
MOISTURE	[redacted]
21°	
DGE.	OTHER FAC[illegible]
2°	[redacted]

SOLD TO	PRICE	TERMS
Cp	Calumet	#109

DISPOSITION

CITY CONT.	PREMIUM	DISCOUNT
1/18/46 51		93

DATE	REMARKS
1/20/46	after

Grand Ridge

93/4 [illegible]

Lake

CURTIS 1000 PAT. 1 661 880 CURTIS 1000 INC.

[fol. 506]

WE CONFIRM SALE TO YOU

DANIEL F. RICE & CO.

NO. 6[illegible]

CAR NO.	ROAD	INITIAL	GRADE
35935	Q	[illegible]	[illegible]

TEST WT.	SPLITS
57 5/	

MOISTURE	F. M.
W 80/102	# 109

DGE.	OTHER FACTORS
W 0/	

SOLD TO	PRICE	TERMS
Cl	Norris	

DISPOSITION

CITY CONT.	PREMIUM	DISCOUNT
1/16 4651		93

DATE	REMARKS
1/7/46	[illegible] 0141

Grand Ridge
Lake

PAT. 1 961 [illegible] CURTIS 1000 INC.

[fol. 507]

WE CONFIRM SALE TO YOU
DANIEL F. RICE & CO.

NO. 6083

CAR NO.	ROAD	INITIAL	GRADE
71984	Q	[illegible]	[illegible]

TEST WT.	SPLITS
53 0/-	
MOISTURE	F. M.
24 0	#109
DGE.	OTHER FACTORS
2 0/-	

SOLD TO	PRICE	TERMS
CP	[illegible]	

DISPOSITION

CITY CONT.	PREMIUM	DISCOUNT
1/18 4657		9¼

DATE	REMARKS
1/28/46	[illegible]

Grand Ridge
Lake

[illegible] PAT. 1 [illegible] CURTIS [illegible] INC.

WE CONFIRM SALE TO YOU

DANIEL F. RICE & CO.

NO 6272

CAR NO.	REAR	INITIAL	GRADE
37976	[illegible]	[illegible]	4yc

TEST WT.	SPLITS
51°	

MOISTURE	F. M.
19.8	Calumet

DGE.	OTHER FACTORS
29	$10

SOLD TO	PRICE	TERMS
CP		

DISPOSITION

	CITY CONT.	PREMIUM	DISCOUNT
7/18	4651		7¼

DATE	REMARKS
7/1/46 after	

7/14 Dr

Ransome H

Lake

[illegible] PAT. [illegible] CURTIS [illegible] INC.

[fol. 509]

WE CONFIRM SALE TO YOU
DANIEL F. RICE & CO.

NO. 6318

CAR NO.	ROAD	INITIAL	GRADE
132172		[illegible]	[illegible]

TEST WT.	SPLITS
51°	

MOISTURE	F. M.
213	[illegible]

DGE.	OTHER FACTORS
2°	

SOLD TO	PRICE	TERMS
Cp		

DISPOSITION

CITY CONT.	PREMIUM	DISCOUNT
1/18 4651		114

DATE	REMARKS
1/4/46	Export

11 [illegible]

Grass Ridge [illegible]
Lake

CURTIS-SPOT PAT. 1,961,[illegible] CURTIS 1000 INC.

FORM 1991

OUR NO

Cargill Inc.

Chgo. Ch. [illegible]

SELLERS NO

DATE 1/31/46

(1/30/46)

INSP. WEIGHTS	

AMOUNT	GRADE	PRICE	SHIPMENT	REMARKS
Cts. 2 Cars	2Y	[illegible]	[illegible]	[illegible]

[illegible] 1.14½

plus .01½

[illegible] 1.15½ [illegible]

EXPIRES

75 c

MAY 16 ABSD

APPLICATIONS

DATE	CAR NO.	WEIGHT FACTORY	WEIGHT SELLERS	GRADE	PRICE	REMARKS	ADVANCES DATE	ADVANCES AMOUNT
	8014	8/1	143875	[illegible]	1.11	[illegible]	3/8	[illegible]
	17977	4/2	1493 57	[illegible]	77	3		
			19¼			107,015		
			6					
			5					
			2					
			32					
10	70424	4/1		[illegible]	45⅝	21½		
							[illegible]	

EXHIBIT 75

[fol. 511]

Refer to Invoice No. 384

Unloaded Chgo 3/1 19__

Car

By CORN PRODUCTS REFINING COMPANY

Corn bought of Cargill Inc

Chicago

Against purchase of _____ for _____ Cars _____ bushels # _____ @ _____,

CAR INITIAL	CAR NUMBER	GRADE	DISCOUNT	WEIGHT	BUSHELS	PRICE	AMOUNT	ADVANCES DATE	ADVANCES AMOUNT	INTEREST CHARGES DAYS	INTEREST CHARGES %	INTEREST CHARGES AMOUNT	FREIGHT
MRS	8014	1 DR 4	4 3/4	80570	1436 25	1.11	1547 01		1425 00				

FORM 1301

OUR NO. 710

Defendants' Exhibit 75K

SELLERS NO.

DATE 1/2

(1/28/46)

Flanley Grain Co.

Sioux City, Ia.

INSP. WEIGHTS	

AMOUNT	GRADE	PRICE	BASIS	SHIPMENT	REMARKS
Cts. 2 cars	2 Y	Iowa Clgs Plus Legal Markups or market or new clg. at time of arrv		30 days	OPA SCALE SIOUX CITY WTS. & GRADES

EXPIRES

MAR 6 Ans'd

APPLICATIONS

DATE	CAR NO.	WEIGHT FACTORY	WEIGHT SELLERS	GRADE	PRICE	REMARKS	ADVANCES DATE	ADVANCES AMOUNT
	66036	7/1	1446.42	20. 4y	103½	81000	a-40	1497 05

Government Defendants Exhibit 75 K

SECR 143

FLANLEY GRAIN CO.

WHOLESALE GRAIN

FORM 1001

OUR NO. 1745 Argo 310

Flanley Grain Co.

Sc. City Ia

SELLERS NO.

DATE 1/29/46
1/28

INSP. WEIGHTS
Sc. City

AMOUNT	GRADE	PRICE	BASIS	SHIPMENT	REMARKS
2 cars	2y	Iowa Ags Plus Mackay.		30 days	S

EXPIRES

Transferred to Peters per L.D.G. letter 2/27

Shotwell Candy Co

APPLICATIONS

DATE	CAR NO.	WEIGHT FACTORY	WEIGHT SELLERS	GRADE	PRICE	REMARKS	ADVANCES DATE	ADVANCES AMOUNT
	66036	sent	to Chicago					

1 car deducted from stocks but 2 on't not cancelled 7/2/46

75-K-3

27 CR 143

F COMPANY LETTER

Government Exhibit | Defendants Exhibit 76A | (✓) Iden. ( ) Rec'd.

In the District Court of the United States, Northern District of Illinois, Eastern Division BEFORE BARNES J.

Roy H. Fuller - Official Court Reporter

Letter #50 AT ROY H. JOHNSON CLERK

Chicago, January 29, 1946

Mr. Elmer Buss,
Office

Our customers were instrumental in obtaining corn for us as follows:

Argo 277	A	3 cars corn sold us by	completed	Lowell Hoit Co.	credit	Illinois Valley Ice Cream Co., Streator, Ill. letter to RR Adam 2-25-46
Argo 279-296	B	4 "	completed	Hollander & Feuerhaken	"	Boulevard Candy Co., Chicago, Ill. letter to RR Adam 2-25-26
Argo 302	C	1 "	complete	Illinois Grain Corp.	"	Beich Candy Co., Bloomington, Ill. letter to RR Adam 2-25-46
Argo 280	D	5 "	complete	Hulburd Warren Chandler	"	John Hill Co., Chicago, Ill.
Argo 293	E	9 "	complete	Hollander & Feuerhaken	"	letter to RR Adam 2-25-46.
a 294	F	5 "	complete	James E. Bennett & Co.	"	letter to RR Adam 2-25-46
a 299	G	5 "	complete	John West & Co.	"	letter to RR Adam 2-25-46.
a 282	H	2 "	complete	Lowell Hoit & Co.	"	King Juices, Chicago, Ill.
a 272	I	1 "	complete	Uhlmann Grain Co.	"	Lennell Cooky Co., Chicago, Ill. letter to RR Adam 2-25-46
spot 46267-	J	1 "	complete	Lowell Hoit Co.	"	Maher Management (Seven-Up) letter to RR Adam 2-22-46
804-501-274-	K	22 "	complete	E. M. Combs & Son	"	New Orleans Confection, Chicago,
283	L	2 "	complete	John West & Co.	"	letter to RR Adam 2-26-46
Argo 284	M	1 "	complete	Lamson Bros. & Co.	"	letter to RR Adam 2-25-46
Argo 287	N	1 "	complete	James E. Bennett & Co.	"	letter to RR Adam 2-22-46.
Argo 291	O	3 "	complete	Baldwin Elevator Co.	"	letter to RR Adam 2-25-46
spot 195417-	P	1 "	complete	Faroll & Co.	"	" " " " "
Argo 295-300	Q	2 "	complete	Uhlmann Grain Col	letter to RR Adam 2-22-46.	"
spot 307	R	5 "	complete	D. F. Rice & Co.	"	Shotwell Mfg. Co. letter to RR Adam 2-25-46 "
Argo 281	S	5 "	complete	Hulburd Warren Chandler	"	So-Grape Co., Chicago, Ill. letter to RR Adam 2-25-46.
Argo 308	T	25,000 bu. (approx. 15 cars) 3 cars not comp 4/17/46		James E. Bennett Co.	"	letter to RR Adam 2-25-46
spot 93164	U	1 car corn sold us by	complete	Faroll & Co.	"	Illinois Canning Co., Hoopeston, Illinois letter to RR Adam 2-22-46
Argo 290	V	1 "	complete	Lowell Hoit Co.	"	Furst McNess Co., Freeport, Ill. letter to RR Adam 2-22-46.
spot 140356 1564 29	W	1 "	complete	" " "	"	Reed Ice Cream Co., Omaha, Neb.

COMPANY LETTER

76A

Chicago, January 29, 1946

Letter #50 - (2)

d-285	X	1 car corn (complete) sold us by	Hollander & Feuerhaken	credit	Reed Ice Cream Co., Omaha, Neb.	letter to R.R. Adam 2-22-46.
a-278	Y	1 " " " " "	Belleville Co-op Grain	"	Hires Bottling Co., Belleville, Ill	letter to R.R. Adam 2-26-46
c-273	Z	1 " " (complete) " " "	Lamson Bros. Co.	"	Cherokee Bottling Co., Cherokee, Iowa.	letter to R.R. Adam 2-22-46.

Very truly yours,

Marion Normile
Secretary to Mr. Allan

MN

cc-Mr. E.W. Schmitt,
New York,
E.E.A. Chicago

[fol. 517]

Chicago, March 21, 1946

Mr. E. W. Schmitt,
New York, N. Y.

Dear Mr. Schmitt:

Please change sub-division "C", letter #50 from 2 cars to one car

credit Bell Candy Company, Bloomington, Illinois.

Very truly yours,

Marion Normile

Secretary to Mr. Adam

[illegible]
[illegible]
[illegible]
E. [illegible]

2/14/46

Chgd Comb 302

SALES DEPARTMENT:

Correction

76A

WE HAVE TODAY PURCHASED FROM:

SELLER'S NAME Illinois Grain Corp

QUANTITY PURCHASED 1 car. Regul Corn

CREDIT Reich Candy Co.

Was originally for 2 cars

Grain Department

[illegible]

February 25, 1946

Mr. R. R. Adam
office

Dear Mr. Adam:

Lowell Holt Co. sale of January 29, our letter #50A #277 has been completed. This corn was unloaded at Argo with car numbers and bushels as follows:

CAR NO.	BUSHELS
16307	1510.18
148070	1854.11
121095	1837.86
TOTAL	5202.15

You have informed us that Illinois Valley Ice Cream Co. was interested in this sale.

Very truly yours,

ELMER H. BUSS

af

cc - Mr. R. W. Schmitt

[fol. 519]

February 25, 1946

Mr. R. H. Adam
OFFICE

Dear Mr. Adam:

Hollander & Fourhaken sale of January 29, our letter #505 #279 and 296 has been completed. This corn was unloaded at Argo with car numbers and bushels as follows:

CAR NO.	BUSHELS
502638	1903.57
9470	1801.61
48784	1530.89
32149	1814.82
TOTAL	7050.89

You have informed us that the Boulevard Candy Co. was interested in this sale.

Very truly yours,

ELMER H. BUSS

af

cc - Mr. E. W. Schmitt

February 25, 1946

Mr. R. R. Adam
OFFICE

Dear Mr. Adam:

Hulburd warren Chandler sale of January 29, our letter #500 #280 has been completed. This corn was unloaded at Argo with car numbers and bushels as follows:

CAR NO.	BUSHELS
145875	1586.36
79072	2027.68
706963	1703.75
278139	1843.04
20862	1986.79
TOTAL	9146.62

You have informed us that the John Hill Co. was interested in this sale.

Very truly yours,

ELMER H. HUSS

af

cc - Mr. E. W. Schmitt

[fol. 521]

February 25, 1946

76A

Mr. R. R. Adam
OFFICE

Dear Mr. Adam:

Included in your letter of January 29, our letter #50E #293 was a Hollander & Feuerbaker sale for mine cars in which John Hill Co. was interested. This contract has been partially completed with car numbers and bushels as follows:

CAR NO.	BUSHELS
10650	1827.86
137051	2292.68
20909	1635.54
15313	1431.61
193530	2029.11
47732	1859.11
702653	1719.11
711964	1593.39
TOTAL	14,387.71

The cars were unloaded at Argo, and we will furnish you with the information on the other cars as they are unloaded.

Very truly yours,

ELMER H. BUSS

af

cc - Mr. E. W. Schmitt

COMPANY LETTER

Chicago, January 3[illegible], 1946

Letter #51

Mr. Elmer Buss,
Office

The following customers were instrumental in obtaining corn for us:

A -	1 car corn sold us by	D. F. Rice & Co.	credit Illinois Valley Ice Cream Co., Streator, Ill.
B -	1 " " " " "	Hollander & Feuerhaken	" Major Management (Seven-Up)
C -	9 cars corn sold us by	John West & Co.	" Chocolate Products Co., Chicago, Ill.
D -	2 " " " " "	Hollander & Feuerhaken	" Curtiss Candy Co., Chicago, Ill.
E -	1 car " " " "	D. F. Rice & Co.	" Ft. Dodge Bottling Co., Ft. Dodge, Ia.
F -	1 " " " " "	Faroll & Co.	" G. D. Searle Co., Skokie, Ill.
G -	4 cars " " " "	D. F. Rice & Co.	" Shotwell Mfg. Co., Chicago, Ill.
H -	2 " " " " "	Flanley Grain Co.	" " " " " " "
I -	10,500 bu. (approx. 6 cars)	Baldwin Elevator	" New Orleans Confections, Chicago, I.
J -	6 cars corn sold us by	E. M. Combs & Son	" " " " " " "
K -	4 cars " " " "	Uhlmann Grain Co.	" " " " " " "
L -	1 car " " " "	Lamson Bros. Co.	" " " " " " "
M -	8 cars " " " "	Faroll & Co.	" " " " " " "
N -	6 " " " " "	Hollander & Feuerhaken	Peanut Specialty Co., Chicago, Ill.
O -	50,000 bu. (approx. [illegible] cars)	James E. [illegible]	" So-Grape Co., Chicago, Ill.
P -	25,000 " " " "	E. F. Hay[illegible]	" " " " " "
Q -	1 car corn sold us by	John West [illegible]	" Ideal Mfg. Co., Jacksonville, Ia.
R -	1 " " " " "	[illegible]	" Mueller Grocers Mfg. Co., Grand Rapids
S -	1 car " " " "	[illegible]	" Gold Medal Beverage Co., St. Paul,
T -	1 " " " " "	Louis [illegible]	" " " " "
U -	6 cars " " " "	[illegible]	" Pepsi-Cola Btlg. Co., [illegible]

COMPANY LETTER

76B

Chicago, January 30, 1946

Letter #51 - (2)

spot - 43952 W - 1 car corn sold us by Lowell Hoit Co. credit Dad's Root Beer, Philadelphia, Pa.

complete

✓ a - 32 " X - 1 " " " " Whiteville Elevator " National Biscuit Co.

complete letter to RR Adam 2-26-46.

✓ a - 346 Y - about 5,800 bu. " " Williams Bros. Co. " Ward Baking Co.

complete letter to RR Adam 2-26-46

a - 292 Z - 2 cars corn sold us by Grand Rapids Farmers " Variety Club Beverage Co., Toledo, Ohio

letter to R R Adam 2-22-46

Very truly yours,

Marion Normile

Secretary to Mr. Adam

MM

cc-Mr. E.W. Schmitt,
New York, N.Y.

COMPANY LETTER

Government Exhibit — Defendants Exhibit 76C

In the District Court of the United States, Northern District of Iowa, Eastern Division

No.

Chicago, January 31, 1946.

Mr. Elmer Bass,
Office

Dear Mr. Bass:

The following customers were instrumental in obtaining corn for us:

complete	4 - 10 cars corn sold us by	Stratton Grain Co.	credit Pan American Candy Co., Ashley, Ill.
complete	8 - 1 car	D. F. Rice Co.	Beier Baking Co., Dixon, Ill.
complete	8 - 1	E. C. Combs & Son	Illinois Valley Ice Cream Co., Streator, Ill.
complete	1	Hollander & Feuerhaken	Boulevard Candy Co., Chicago, Ill
complete	11 cars		Peanut Specialty Co., Chicago, Ill.
complete		Lamson Bros.	Mrs. Snyder's, Chicago, Ill.
complete		Hollander & Feuerhaken	Curtiss Candy Co., Chicago, Ill.
not comp 2/28/46	2 cars	Froming Elevator	
complete	1 car	John West & Co.	John Hill Co., Chicago, Ill.
complete	6 cars	D. F. Rice & Co.	Shotwell Mfg. Co., Chicago, Ill.
not complete 2/28/46	(approx. 3 cars)		
complete	corn sold us by	E. E. Combs & Son	Carlay Co., Inc., Chicago, Ill.
complete		Quaker Oats Co.	Quaker Oats Co., Chicago, Ill.
complete	1 car	Lowell Hoit Co.	Maher Management, Chicago, Ill.
complete	7 cars	Hulburd Warren Chandler	Dawn Donut Co., Jackson, Mich.
complete	1 car	Rosenbaum Bros. Co.	Holland American Wafer Co., Grand Rapids, Mich.
complete		Uhlmann Grain Co.	Bon Ton Bakery, Fort Wayne, Ind.
complete	cars	Williams Bros. Co.	Ward Baking Co.,
complete		D. F. Rice & Co.	Model Bakery Co., Fairmont, Minn. (only 100 bgs. sugar on this car
complete			Stella Mfg. Co., Danville, Ill.
complete		C. H. Pultman Grain	New Orleans Confections, Chicago

[fol. 525]

DEFENDANTS' EXHIBIT 76C

462

[fol. 526]

COMPANY LETTER

Chicago, January 31, 1946

Letter #52 (2)

V - 2 cars	corn	complete sold us by	W.W. Dewey & Sons	credit	Howe Anderson Bakery Galesburg, Ill.
W - 3 cars	"	complete " "	G.W. Cole Grain	"	Hireley's
1621 X - 5	"	complete " "	Illinois Grain Co.	"	New Orleans Confections, Chicago, Ill.
Y - 1 car	"	complete " "	W. W. Dewey	"	Lucky Boy Bakery, Galesbur
1621 Z - 1	"	complete " "	Luke Grain Co.	"	Wurst & Miller Bkry., Morton, Ill.

Very truly yours,

Marion Normile

Secretary to Mr. Adam

MN

COMPANY LETTER

Government Exhibit

Defendants Exhibit 76 D

In the District Court of the United States, Northern District of Illinois, Eastern Division
No.
Roy E. Fuller

Letter #51

Chicago, February 1, 1946

Mr. Elmer Bass,
Offipo

Dear Mr. Bass:

The following customers have been instrumental in obtaining corn for us:

F - 1 car	corn sold us by	F B & CC Miles	credit Reed Ice Cream Co., Omaha, Neb.
B - 3 cars	" " " "	Scoular-Bishop	" Stevens-Dr.Pepper,7-Up Btlg. Co., McCook, Neb.
C - 5	" " " "	Hart Grain Co.	" Streckman Bros.,Williamsport, Pa
D - 3	" " " "	Cmar, Inc.,	" Merchants Biscuit Co., Omaha, Neb.
E - 4	" " " "	Root Grain Co.	" Coca Cola Btlg. Wks., Holdredge, Neb
P - 5	" " " "	Continental Grain Co	" Debus Baking Co., Hastings, Neb.
G - 1 car	" " " "	D. F. Rice & Co.	" Carlay Co., Inc., Chicago, Ill.
H - 5 cars	" " " "	Luke Grain Co.	"
I - 1 car	" " " "	J. Younge Grain Co.	"
J - 1	" " " "	Mueller Grain Co.	" So-Grape Co., Chicago, Ill.
K - 1	" " " "	W. W. Dewey & Sons	" New Orleans Confections, Chicago, Ill
L - 1	" " " "	Continental Grain Co.	"
M - 1	" " " "	G. W. Cole Grain Co.	"
N - 1	" " " "	Lowell Hoit Co.	"
O - 1	" " " "	Feltman Grain Co.	"
P - 5 cars	" " " "	Root Grain Co.	" Maher Management Co., Chicago, Ill.
Q - 1 car	" " " "	[illegible] Co.	" National Biscuit Co.
R - 3 cars	" " " "	[illegible]ular Bishop	" Stevens Dr. Pepper 7 Up Btlg. Co., McCook, Nebraska.
S - 3	" " " "	E. E. Combs & Son	" Barley Co., Inc., Chicago, Ill.
T - 1 car	" " " "	John West & Co.	"
U - 2 cars	" " " "	Cargill, Inc.	" Shotwell Candy Co. Chicago, Ill.

[fol. 527]

DEFENDANTS' EXHIBIT 76D

COMPANY LETTER

76D

Chicago, February 1, 1946

ne 3-1-46 Letter #53/- (2) / ne 3-

a 373 V - 6 cars 1 cars corn sold us by D.F. Rice & Co. not complete 5/23/46 credit Shotwell Candy Co., Chicago, Ill.

a-380 W - 1 car complete " " " " Illinois Grain Corp " Pepsi-Cola Co., Louisville, Ky.
letter to R R Adam 3-1-46.

a-383 X - 2 cars complete " " " " E. M. Combs & Son " Meat Industries, Chicago, Ill.
letter to R R Adam - 3-1-46.

a 386 Y - 1 car complete " " " " Uhlmann Grain Co. " ~~International Mlg. Co., Minneapolis, Minn~~ North Center Baking Co
letter to R R Adam 3-1-46.

a 388 Z - 3 cars complete " " " " Stratton Grain Co. " Eli Lilly, Indianapolis, Ind.
letter to R R Adam - 3-1-46.

Yours very truly,

Marion Powell
Secretary to Mr. Adam

MM

cc-Mr. E. W. Schmitt,
New York, N. Y.

COMPANY LETTER

Letter #54 Chicago, February 4, 1946

Mr. Elmer Buss,
Office

Dear Mr. Buss:

The following customers were instrumental in obtaining corn for us on a reciprocal basis:

A - 2 cars corn sold us by	Lowell Hoit & Co.	credit	Blue Seal Food Products,	Chicago, Ill.
B - 4 " " " " "	Hulburd-Warren-Chandler	"	Burny Bros.,	" " "
C - 2 " " " " "	Stratton Grain Co.	"	Carlay Co., Inc.,	" "
D - 3 " " " " "	E. M. Combs Co.	"	" " " "	" " "
E - 9,791.24 bushels (approximately 6 cars)	E.R. Bacon Grain Co.	"	Curtiss "Candy" Co.,	" " "
F - 2 cars corn sold us by	Hollander & Feuerhaken	"	Curtiss Candy Co.	" " "
G - 5 " " " " "	" " " " "	"	DeMet's, Inc.,	" " "
H - 6 " " " " "	" " " " "	"	Glaser-Crandall Co.,	" " "
I - 1 car " " " "	John West & Co.	"	John Hill Co.	" " "
J - 2 cars " " " "	Lowell Hoit & Co.	"	Maher Management Co.,	" " "
K - 1 car " " " "	Hollander & Feuerhaken	"	" " " "	" " "
L - 1 " " " " "	" " " " "	"	Midwest Food Products	" " "
M - 28 cars " " " "	" " " " "	"	Peanut Specialty Co.,	" " "
N - 1 car " " " "	John West & Co.	"	Perkins Products Co.	" " "
O - 2 cars " " " "	D. F. Rice & Co.	"	Shotwell Mfg. Co.	" " "
P - 5 cars " " " "	Lamson Bros.	"	Mrs. Snyder's	" " "
Q - 1 car " " " "	Lowell Hoit & Co.	"	Superior Beverage Co.,	Gary, Ind.
R - 1 " " " " "	Uhlmann Grain Co.	"	Jellum, Inc.,	Joliet, Ill.
S - 1 car " " " "	Lamson Bros. Co.	"	Kautz Baking Co.,	Muscatine, Ia.
T - 1 " " " " "	Lowell Hoit Co.	"	Weberling Bakery,	Peru, Ill.
U - 3 cars " " " "	Indiana Grain Coop.	"	Dietzens Bakery,	Kokomo, Ind.

cc-E.W.S.

Very truly yours,

[fol. 529]

DEFENDANTS' EXHIBIT 76E

466
[fol 530]
DEFENDANTS' EXHIBIT 76F

COMPANY LETTER

Chicago, February 22, 1966

76 F

Letter #78

Mr. E. Buss
Chicago Office

Dear Mr. Buss:

The following customers were instrumental in obtaining corn for us:

A-4	cars corn sold us by	D. F. Rice & Co.	Credit Peanut Spec. Co., Chicago
B-4	" " " " "	Lowell Holt & Co.	" Mrs. Karls' Bakery, Milwaukee, Wis.
C-3	" " " " "	" " " "	" King Juices, Chicago
D-4	" " " " "	Hollander & Feuerhaken	" Pepsi Cola, Sedalia, Mo.
E-9	" " " " "	Hulburd, Warren, Chandler	" Peanut Spec. Co., Chicago
F-3	" " " " "	Stratton Grain Co.	" Pepsi Cola, Marion, Ill.
G-5	" " " " "	" " "	" " " Quincy, Ill.
H-4	" " " " "	" " "	" Dr. Pepper, Roanoke, Va.
I-1	" " " " "	" " "	" Adams Bakery, Portsmouth, O
J-5	" " " " "	" " "	" St. Louis Fondant Co. St. Louis, Mo.
K-2	" " " " "	" " "	" Vess Beverage Co., Columbus,
L-1	" " " " "	" " "	" Glaser Crandall, Chicago
M-3	" " " " "	" " "	" G. I. Gates Mfg. Co, Columbus, O.
N-1	" " " " "	" " "	" Grapette, Pittsburgh, Kan.
O-2	" " " " "	D. F. Rice & Co.	" Chicago Cardboard Co, Chicago
P-1	" " " " "	" " "	" Pfaff Bakery, Fort Dodge, Ia.
Q-2	" " " " "	" " "	" Staar Bros. Creamery Co. Mt. Vernon, Ill.
R-2	" " " " "	" " "	" Gladness Bakery Co. Minneapolis, Minn.

[fol. 531]

Chicago, February 22, 1946

76F

Page #2
Letter #78

Mr. E. Buss:

831 S-3 cars corn sold us by Lowell Hoit & Co. Credit Chelsea Mfg. Co., Mich.
811 T-2 " " " " " " " " Maher Management Co., Chicago
860 U-1 " " " " " " " " Shotwell Candy Co., Chicago
813 V-4 " " " " " " " " Granite City Ice Cream, Granite City, Ill.
W-2 " " " " " " " " Pepsi Cola, Chicago, Ill.
X-1 " " " " " Hollander & Feuerhaken " Midwest Foods, Chicago
849 Y-3 " " " " " " " " Royalty Confectioners, Chicago
Z-1 " " " " " " " " Maher Management Corp, Chicago

R. R. ADAM

RRA:bc

COMPANY LETTER

76 G

Letter #6[illegible]

Chicago, February 1[illegible], 1946

Mr. Elmer Bus[illegible]
Office

Dear Mr. Buss:

The following [illegible] in obtaining corn for us:

A - [illegible] car corn sold us by	James [illegible]	credit	Gillespie Dairy, Gillespie, Ill.
B - [illegible] " " " "	L. F. Havey	"	Crescent Creamery Co., St. Paul, Min
C - 1 " " " " "	J. West & [illegible]	"	Curtiss Candy Co. Chicago, Ill.
D - [illegible] " " " " "	James E. [illegible]	"	Royalty Confections, Chicago, Ill.
E - 2 cars " " " "	E. M. Combs & Son	"	Chas. Herendeen & Son, Chicago,
F - 1 car " " " "	Lowell Hoit & Co.	"	Elgin Foods, Elgin, Ill.
G - 3 cars " " " "	A. C. Curry Grain	"	Brookema Co., Oak Park, Ill.
H - 2 car " " " "	L. F. Havey	"	Stewart Bkg. Co., Bremen, Ind.
I - 1 car " " " "	J. West & Co.	"	Chocolate Products, Chicago, Ill
J - 3 cars " " " "	E. M. Combs & Son	"	Sisco-Hamilton Co., Chicago, Ill.
K - 1 car " " " "	Lamson Bros. Co.	"	" " " " " " "
L - 1 " " " " "	Hollander & Feuerhaken	"	Overland Candy Co., Chicago, Ill.
M - 1 " " " " "	Cleveland Grain Co.	"	Pepsi-Cola Co., Louisville, Ky.
N - 1 " " " " "	L. F. Rice Co.	"	Illinois Valley Ice Cream Co., Streator, Ill.
O - 10,000 bu. (approx. 6 cars)	Lowell Hoit	"	Vess Beverage Co., St. Louis, Mo.
P - 5 cars corn sold us by	Illinois Grain Co.	"	Pan American Candy Co., Ashley, Il
Q - 2 " " " " "	Hulburd Warren Chandler	"	New Process Bkg. Co., Chicago, Ill.
R - 2 " " " " "	J. E. Begley	"	Star Union Products, Peru, Ill.
S - 15 " " " " "	Stratton Grain Co.	"	John Horne, Chicago, Ill.
T - 10 " " " " "	Stratton Grain Co.	"	Glaser-Crandall Co., Chicago, Ill.
U - 15 " " " " "	[illegible]	"	Shotwell Mfg. Co.
V - 3 " " " " "	Illinois Grain Corp.	"	Valier & Spies, St. Louis, Mo.
W - 4 " " " " "	Lamson Bros.	"	Wm. Wrigley & Co. Chicago, Ill.

RRA/n-cc-EWS

532

COMPANY LETTER

S2249143

FILED

FEB 1 [illegible]

AT [illegible]SON
CLERK

Chicago, May 27, 1940

Government Exhibit
Defendants Exhibit 76 H
In the District Court of the United States, Northern District of Illinois, Eastern Division
No.
Roy E. Fuller - Official

Letter #192

Mr. Wilkinson
Chicago, Office

Dear Mr. Wilkinson:

The following customers were instrumental in obtaining corn for us:

Cont. No. Chicago					
2081	A-1	car corn sold us by	E.F. Havey	Credit	Kendale Lab. ~~Jewel Tea Co.~~ Chgo, Ill.
2082	B-7	" " " " "	Stratton Grain Co.	"	Shotwell Mfg. Co. Chgo, Ill.
2083	C-1	" " " " "	Stratton Grain Co.	"	Brockema Choc. Co. Oak Park, Ill.
2084	D-1	" " " " "	Bell Trimble Grain Co.	"	Chadron Milling Co. Chadron, Neb.
K.C. Cont.					
[illegible]	E-5	" " " " "	Missouri Farmers Assn.	"	Hathaway Bky. Co. Cambridge, Mass.
Spot Car					
[illegible]	F-1	" " " " "	Lowell Holt & Co.	"	Kendale Lab ~~Jewel Tea~~ Co. Chgo, Ill.
[illegible]	G-1	" " " " "	D.F. Rice & Co.	"	Crescent Creamery St Paul, Minn.
40199	H-1	" " " " "	Lamson Bros. & Co.	"	Henry & Henry Buffalo, N.Y.

R.F. ADAM

RRA:cdb

cc:EWS

[fol. 534]

DEFENDANTS' EXHIBIT 79

P & F No. 118 2M 8-2-41

Expires:—1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

GRAIN DEPARTMENT
CORN GRINDING PLANT
CEDAR RAPIDS, IOWA

PENICK & FORD, LTD.
INCORPORATED

CORN, SUGAR CANE AND MAPLE PRODUCTS

MEMBERS
Grain Dealers National Ass'n.
Western Grain Dealers Ass'n.

Cedar Rapids, Iowa, 8/10/45

Contract No. 3530

Name Lamson Bros. & Co.,
Board of Trade Bldg.,
Address Chicago, Ill.

We confirm purchase from you today of 1 1.17½ Cars Bushels of SY Corn

For shipment within In Town at ~~31.15 3/4~~ cents a bushel basis ~~CHICAGO~~ Peoria St. Louis

For shipment to Cedar Rapids, Iowa, subject to Cedar Rapids weights and inspection.

REMARKS:— Callender
12134 - 13.4% 55.5# 5.9 dgd.

CARS APPLIED

Acct. Sale Number	POINT OF ORIGIN	Car Initial	Car Number	R. R.	Date B/L	Date Notice Arv.	Inspection Grade	Inspection Moisture	Inspection Wt. per Bushel	Inspection Damaged	Discount	Date Unloaded	Bushels lb	Advance Draft
H/32	Call. nd.	[illegible]	12134	[illegible]	8/8	8/10	3y	13.4	55.5	5.9		8/11	148278	1400

[fol. 536]

DEFENDANTS' EXHIBIT 80

Defendants' Exhibit 80

10/11/45

CORN UNLOADED TO DATE FOR RATSUM ACCOUNT

	Car Number	Date of Shipment	Shipper	Origin	Bushels
				Brought For'd	470,106-04
280	BAR 60596	10/4	Eberhardt & Simpson	St. Joe, Mo.	
	x CBQ 56814			Red Cloud, Nebr.	1,136-04
					471,242-08

403 2R143

Invoice

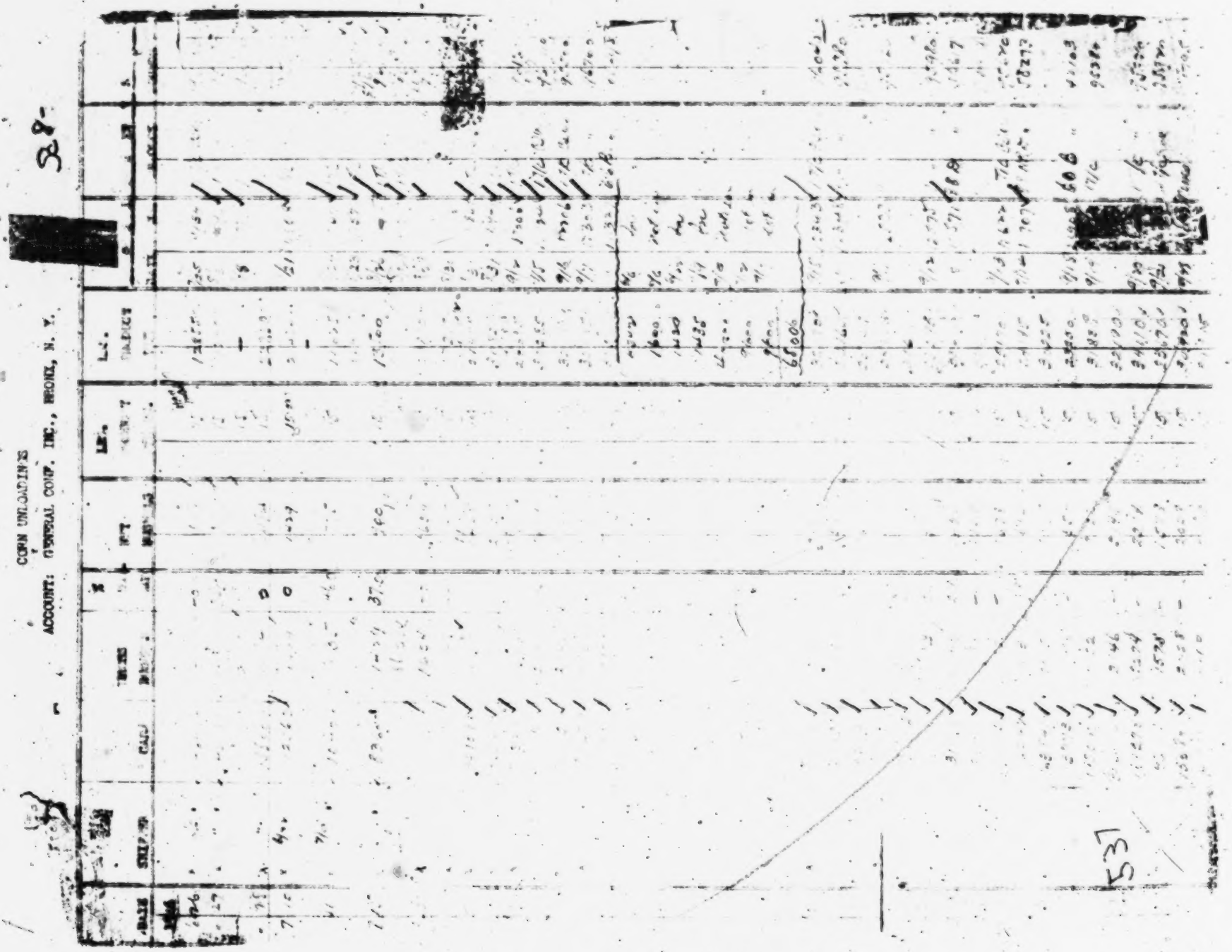
Fenick & Ford, Ltd. Inc.,
Cedar Rapids, Iowa.
Grain Department

80 (✓) Iden. ( ) Rec'd.

cc - Mr. H.A. Moran

[fol. 537]

DEFENDANTS' EXHIBIT 81



[fol. 537a]

19.72529
956.20
582.73
411.03
953.80
957.20
959.20
17.95

24563.40 ¤

CAR &	GROSS BUSHELS	% DAMAGE	NET BUSHELS	LB.S PRODUCT PER BU.	LBS. PRODUCT DUE	INVOICE SHIPMENTS DATE	NO.	PRODUCT	POUNDS

DATE 1946	SHIPPER	CAR #	GROSS BUSHELS	% DAMAGE	NET BUSHELS	LBS. PRODUCT PER BU.	LBS. PRODUCT DUE	INVOICE DATE	INVOICE NO.	INVOICE PRODUCT	INVOICE POUNDS

[fol. 541]

DEFENDANTS' EXHIBIT 82

TRANSCRIPT SHOTWELL MANUFACTURING COMPANY, CHICAGO, ILLINOIS, ACCOUNT
YEARS 1941 - 1947 INCL.

DEFENDANTS EX. 82

DATE	INV. NUMBER	PRODUCT	POUNDS	PRICE PER CWT.	EXTENSION	CASH DISCOUNT ALLOWED	CREDITS RET'D MERCHANDISE Pounds	CREDITS RET'D MERCHANDISE Amount	NET AMOUNT PAID ON TRANSACTION
1941									
1/6	1150	One Tank Car 43° CSU	96,000	$2.59	$ 2,486.40	$	1,000	$ 25.90	$ 2,460.50
1/11	1358	One Tank Car 43° CSU	95,920	2.59	2,484.33		560	14.50	2,469.83
2/3	2199	One Tank Car 43° CSU	95,960	2.59	2,485.36		680	17.61	2,467.75
2/8	2573	54/140# bags Conf. Mould. Stch.	7,560	3.10	234.36				234.36
5/7	6397	One Tank Car 43° CSU	96,040	2.59	2,487.44		700	18.13	2,469.31
5/27	7331	400/140# bags Conf. Mould Stch.	56,000	3.00	1,680.00				1,680.00
8/20	10724	One Tank Car 43° CSU	95,900	2.69	2,579.71	51.59	580	15.60	2,512.52
9/4	11385	One Tank Car 43° CSU	96,000	2.69	2,582.40	51.65	400	10.76	2,519.99
10/14	13420	One Tank Car 43° CSU	96,000	2.79	2,678.40	53.57	460	12.83	2,612.00
11/29	15721	One Tank Car 43° CSU	96,100	2.79	2,681.19	52.48	440	12.03	2,616.68
					$22,379.59	$ 209.29		$127.36	$22,042.94

[fol. 542]

-3-

TRANSCRIPT SHOTWELL MANUFACTURING COMPANY, CHICAGO, ILLINOIS, ACCOUNT
YEARS 1941 - 1947 INCL.

DATE	INV. NUMBER	PRODUCT	POUNDS	PRICE PER CWT.	EXTENSION	CASH DISCOUNT ALLOWED	CREDITS NET'D MERCHANDISE		NET AMOUNT PAID ON TRANSACTION
							Pounds	Amount	
1946									
2/4	2282	One Tank Car 43o CSU Hi D.E.	95,480	$3.09	$ 2,950.33	$ 59.01			$ 2,891.32
3/2	3438	One Tank Car 43o CSU Hi D.E.	96,080	3.09	2,968.87	59.38			2,909.49
3/9	3764	100/100# bags Conf. "C" T.B. Stch.	10,000	4.42	442.00	8.84			433.16
3/16	3995	One Tank Car 43o CSU Hi D.E.	95,860	3.09	2,962.07	59.24			2,902.83
3/26	4443	75/100# bags Conf. "C" T.B. Stch.	7,500	4.52	339.00	6.78			332.22
4/5	4889	One Tank Car 43o CSU Hi D.E.	95,380	3.09	2,947.24	58.94			2,888.30
4/10	5080	600/100# bags Conf. "C" T.B. Stch.	60,000	4.32	2,592.00	51.84			2,540.16
5/10	6276	One Tank Car 43o CSU Hi D.E.	96,140	3.09	2,970.73	59.41			2,911.32
6/14	7593	One Tank Car 43o CSU Hi D.E.	96,060	3.09	2,968.25	59.37			2,908.88
7/16	8739	400/100# bags Conf. "C" T.B. Stch.	40,000	5.56	2,224.00	44.48			2,179.52
7/18	1463	49/100# bags Conf. "C" T.B. Stch.)	4,900	5.66	282.43	5.65			276.78
		1/90# bag Conf. "C" T.B. Stch.)	90						
7/22	9005	One Tank Car 43o CSU Hi D.E.	95,880	5.53	5,302.16	106.04			5,196.12
8/17	11032	One Tank Car 43o CSU	96,100	5.21	5,006.81	100.14			4,906.67
8/22	11211	Add'l chg. adj. price Inv. #6276	96,140	(.29)					
	11211	Add'l chg. adj. price Inv. #7593	96,060	.68)	932.01	18.64			913.37
9/21	13078	One Tank Car 43o CSU Hi D.E.	96,000	4.91	4,718.51	94.37			4,624.14
10/2	13612	532/100# bags Conf. "C" T.B. Stch.	53,200	5.99	3,186.68	63.73			3,122.95
10/18	14327	One Tank Car 43o CSU Hi D.E.	96,320	4.81	4,632.99	92.66			4,540.33
11/9	15255	One Tank Car 43o CSU Hi D.E.	95,880	3.76	3,605.09	72.10			3,532.99
12/4	16624	One Tank Car 43o CSU Hi D.E.	96,180	3.41	3,279.74	65.59			3,214.15
					$54,310.91	$1,086.21			$53,224.70

1945								
1/4	1108	One Tank Car 43e CSU Hi D.E.	95,880	3.09	2,962.69	59.25		2,903.44
1/13	1466	One Tank Car 43e CSU Hi D.E.	96,000	3.09	2,966.40	59.33		2,907.07
2/7	2413	600/100# bags Conf. "C" T.B. Stch.	60,000	4.32	2,592.00	51.84		2,540.16
2/17	7197	One Tank Wagon 43e CSU	15,180	3.19	484.24	9.68		474.56
2/23	2872	One Tank Car 43e CSU Hi D.E.	95,180	3.09	2,941.06	58.82		2,882.24
3/12	3550	One Tank Car 43e CSU Hi D.E.	96,380	3.09	2,978.14	59.56		2,918.58
4/2	4377	One Tank Car 43e CSU Hi D.E.	95,060	3.09	2,937.35	58.75		2,878.60
5/7	5819	One Tank Car 43e CSU Hi D.E.	96,180	3.09	2,971.96	59.44		2,912.52
6/6	6998	800/100# bags P.F.P.Stch.7½% Moisture	80,000	3.95	3,160.00	63.20		3,096.80
6/9	7132	One Tank Car 43e CSU Hi D.E.	96,460	3.09	2,980.61	59.61		2,921.00
7/21	8754	600/100# bags Conf. "C" T.B. Stch.	60,000	4.32	2,592.00	51.84		2,540.16
7/23	8767	One Tank Car 43e CSU Hi D.E.	96,260	3.09	2,974.43	59.49		2,914.94
8/6	9344	One Tank Car 43e CSU Hi D.E.	96,260	3.09	2,974.43	59.49		2,914.94
9/10	10422	One Tank Car 43e CSU Hi D.E.	95,740	3.09	2,958.37)	63.25		3,099.32
9/11	8860	33/140# bags Conf. "C" T.B. Stch.	4,620	4.42	204.20)			
9/14	10616	50/100# bags Conf. "C" T.B. Stch.	5,000	4.656	232.80	4.66		228.14
10/6	11478	One Tank Car 43e CSU Hi D.E.	95,880	3.09	2,962.69	59.25		2,909.44
10/20	12114	600/100# bags Conf. "C" T.B. Stch.	60,000	4.32	2,592.00	51.84		2,540.16
11/9	12748	One Tank Car 43e CSU Hi D.E.	95,520	3.09	2,951.57	59.03		2,892.54
12/6	13909	One Tank Car 43e CSU Hi D.E.	96,360	3.09	2,977.52	59.55		2,917.97
					$50,394.46	$1,007.88		$49,386.58

[fol. 544]

Def Ex 82

TRANSCRIPT SHOTWELL MANUFACTURING COMPANY, CHICAGO, ILLINOIS, ACCOUNT
YEARS 1941 - 1947 INCL.

DATE	INV. NUMBER	PRODUCT	POUNDS	PRICE PER CWT.	EXTENSION	CASH DISCOUNT ALLOWED	CREDITS RET'D MERCHANDISE		NET AMOUNT PAID ON TRANSACTION
1944							Pounds	Amount	
1/11	1372	One Tank Car 43e CSU Hi D.E.	95,780	$2.79	$ 2,672.26	$ 53.44			$ 2,618.82
2/11	2659	700/100# bags Conf. "C" T.B. Stch.	70,000	3.70	2,590.00	51.80			2,538.20
2/25	3323	Add'l chg. adj. price Inv. #2659	70,000	.62	434.00	8.68			425.32
2/28	3553	One Tank Car 43e CSU Hi D.E.	96,400	2.79	2,689.56	53.79			2,635.77
3/17	4283	One Tank Car 43e CSU Hi D.E.	96,360	2.79	2,688.44	53.77			2,634.67
3/21	4397	350/100# bags Conf. "C" T.B. Stch.	35,000	4.32	1,512.00)				
	4397	350/100# bags Conf. Mould. Stch.	35,000	3.83	1,340.50)	57.05			2,795.45
4/20	5328	One Tank Car 43e CSU Hi D.E.	96,740	2.79	2,699.05	53.98			2,645.07
5/27	6562	One Tank Car 43e CSU Hi D.E.	96,420	2.79	2,690.12	53.80			2,636.32
6/3	6813	Add'l chg. adj. price Inv. #4283	96,360	.30	289.08)				
6/3	6892	Add'l chg. adj. price Inv. #5328	96,740	.30	290.22)				
6/3	7161	Add'l chg. adj. price Inv. #6562	96,420	.30	289.26)	17.37			851.19
7/5	8272	One Tank Car 43e CSU Hi D.E.	95,620	3.09	2,954.66	59.09			2,895.57
8/5	9392	One Tank Car 43e CSU Hi D.E.	96,120	3.09	2,970.11	59.40			2,910.71
9/6	10572	One Tank Car 43e CSU Hi D.E.	96,340	3.09	2,976.91	59.54			2,917.37
10/6	11748	One Tank Car 43e CSU	96,220	3.09	2,973.20	59.46			2,913.74
11/10	13154	One Tank Car 43e CSU Hi D.E.	96,020	3.09	2,967.02	59.34			2,907.68
12/9	14356	One Tank Car 43e CSU Hi D.E.	95,500	3.09	2,950.95	59.02			2,891.93
					$37,977.34	$ 759.53			$37,217.81

[fol. 545]

1942									
1/21	2289	One Tank Car 43o CSU	95,940	2.79	2,676.73	53.53	1,240	33.91	2,589.29
3/9	4476	One Tank Car 43o CSU	96,000	2.79	2,678.40	53.57	720	19.69	2,605.14
4/15	6364	One Tank Car 43o CSU	95,700	2.79	2,670.03	53.40	780	21.32	2,595.31
6/23	7993	75/140# bags Conf. "C" T.B. Stch.	10,500	3.80	399.00	7.55			391.45
6/24	10133	One Tank Car 43o CSU	95,200	2.79	2,656.08	53.12	1,280	35.00	2,567.96
7/2	8109	75/140# bags Conf. "C" T.B. Stch.	10,500	3.80	399.00	7.98			391.02
7/4	10690	One Tank Car 43o CSU	95,680	2.79	2,669.47	53.39	880	24.06	2,592.02
7/16	8297	75/140# bags Conf. "C" T.B. Stch.	10,500	3.80	399.00	7.98			391.02
7/24	8399	35/140# bags Conf. Mould. Stch.	4,900	3.30	161.70	3.23			158.47
8/7	8600	One Tank Wagon 43o CSU	14,910	2.89	430.90	8.62			422.28
8/8	8601	One Tank Wagon 43o CSU	12,860	2.89	371.65	7.43			364.22
8/8	12331	One Tank Car 43o CSU Hi D.E.	96,000	2.79	2,678.40	53.57	680	18.59	2,606.24
9/16	14251	One Tank Car 43o CSU Hi D.E.	95,960	2.79	2,677.28	53.55	1,260	34.45	2,589.28
10/14	15633	One Tank Car 43o CSU Hi D.E.	95,820	2.79	2,673.38	53.46	400	10.94	2,608.98
11/25	17473	One Tank Car 43o CSU Hi D.E.	94,380	2.79	2,633.20	52.66	700	19.14	2,561.40
12/29	18948	One Tank Car 43o CSU Hi D.E.	95,100	2.79	2,653.29	52.68	960	26.24	2,574.37
					$28,827.51	$ 575.72		$243.34	$28,008.45
1943									
1/11	1387	428/140# bags Conf. "C" T.B. Stch.	59,920	3.70	2,217.04	44.35			2,172.69
1/20	1824	One Tank Car 43o CSU	95,220	2.79	2,656.64	53.13	620	16.95	2,586.56
2/24	3400	One Tank Car 43o CSU Hi D.E.	95,500	2.79	2,664.45	53.29	1,500	41.01	2,570.15
4/7	5152	One Tank Car 43o CSU Hi D.E.	96,200	2.79	2,683.98	52.86	480	13.12	2,618.00
4/17	5659	428/140# bags Conf. "C" T.B. Stch.	59,920	3.70	2,217.04	44.34			2,172.70
5/5	6413	One Tank Car 43o CSU Hi D.E.	96,520	2.79	2,692.91	53.86	800	21.87	2,617.18
6/16	8198	One Tank Car 43o CSU Hi D.E.	96,360	2.79	2,688.44	53.33	320	8.75	2,626.36
7/24	9921	One Tank Car 43o CSU Hi D.E.	96,700	2.79	2,697.93	53.96	1,000	27.34	2,616.63
8/11	10693	One Tank Car 43o CSU Hi D.E.	96,240	2.79	2,685.10	53.70	460	12.57	2,618.83
10/27	14101	One Tank Car 43o CSU Hi D.E.	95,940	2.79	2,676.73	53:53	260	7.10	2,616.10
11/23	15318	One Tank Car 43o CSU Hi D.E.	95,760	2.79	2,671.70	53.29			2,618.41
12/11	16137	500/140# bags Conf. "C" T.B. Stch.	70,000	3.70	2,590.00	51.80			2,538.20
12/16	16303	One Tank Car 43o CSU Hi D.E.	95,460	2.79	2,663.33	53.27			2,610.06
					$33,805.29	$ 674.71		$118.71	$32,981.87

[fol. 546]

1947										
1/11-	1381	One Tank Car 43o CSU Hi D.E.	95,880	3.11	2,981.87	59.64			2,922.23
2/8	2440	One Tank Car 43o CSU Hi D.E.	95,120	3.11	2,958.23	59.16			2,899.07
3/8	3634	One Tank Car 43o CSU Hi D.E.	94,300	3.51	3,309.93	66.20			3,243.73
3/18	3715	23/100# bags Conf. "C" T.B. Stch.	2,300	5.12	117.76	2.36			115.40
4/12	5013	One Tank Car 43o CSU Hi D.E.	95,440	4.11	3,922.58	78.45			3,844.13
4/15	4011	One Tank Wagon 42o CSU Hi D.E.	14,760	4.21	621.40	12.43			608.97
5/10	6066	One Tank Car 43o CSU Hi D.E.	96,540	3.96	3,822.98	76.46			3,746.52
6/13	7393	One Tank Car 43o CSU Hi D.E.	96,360	4.96	4,779.46	95.59			4,683.87
7/3	8146	One Tank Car 43o CSU Hi D.E.	96,060	5.21	5,004.73	100.09			4,904.64
8/6	9611	One Tank Car 43o CSU Hi D.E.	96,020	5.21	5,002.64	100.05			4,902.59
9/13	11188	One Tank Car 43o CSU Hi D.E.	95,800	5.96	5,709.68	114.19			5,595.49
10/10	12400	One Tank Car 43o CSU Hi D.E.	96,640	5.46	5,276.54	105.53			5,171.01
11/8	13563	One Tank Car 43o CSU Hi D.E.	96,220	5.46	5,253.61	105.07	400	21.40	5,127.14
12/6	14650	One Tank Car 43o CSU Hi D.E.	96,520	5.46	5,269.99	105.40	460	24.62	5,139.97
					$54,031.40	$1,080.62		$ 46.02	$52,904.76

[fol. 547]

DEFENDANTS' EXHIBIT 83

Exhibit A

GRAIN DEPARTMENT
CORN GRINDING PLANT
CEDAR RAPIDS, IOWA

PENICK & FORD, LTD.
INCORPORATED

CORN, SUGAR CANE AND MAPLE PRODUCTS

Grain Dealers National Ass'n.
Western Grain Dealers Ass'n.

Cedar Rapids, Iowa 2/8/46

Contract No 4480

Name Cargill, Inc.,

Address City

We confirm purchase from you today of 1 Cars of 2 y Corn

For shipment within Soon as possible ceiling * cents a bushel basis CHICAGO area A.

For shipment to Cedar Rapids, Iowa, subject to Cedar Rapids weights and inspection.

REMARKS:—

Plus 2-1/2¢ merchandising - 1/2¢ brokerage

OPA discounts

*Present ceiling, ceiling in effect time of shipment, or market whichever is the highest to apply

CARS APPLIED

Acct. Sale Number	POINT OF ORIGIN	Car Initial	Car Number	R R	Date B/L	Date Notice Arr.	INSPECTION Grade	Moisture	Wt. per Bushel	Damaged	Discount	Date Unloaded	Bushels	Advance Draft
9201	Maple	RDB	[illegible]	[illegible]	[illegible]	3/13	Sgy	27	43		28 3/4	3/13	1,575.20	[illegible]

(fol. 549)

DEFENDANTS' EXHIBIT 84

Expires—1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 [illegible] 22 23 24 25 26 27 28 29 30 31

GRAIN DEPARTMENT
CORN GRINDING PLANT
CEDAR RAPIDS IOWA

PENICK & FORD, LTD.
INCORPORATED

CORN SUGAR CANE AND MAPLE PRODUCTS

MEMBERS
Grain Dealers National Ass'n.
Western Grain Dealers Ass'n

Cedar Rapids, Iowa 2/7/46

Contract No 4475

Name Cargill, Inc.,

Address City

We confirm purchase from you today of 5 Cars of 2 y Corn

For shipment within soon as possible at ceiling * [illegible] cents a bushel basis [illegible] Area A

For shipment to Cedar Rapids, Iowa, subject to Cedar Rapids weights and inspection

REMARKS — Plus 2-1/2% merchandising - 1/2% brokerage

*Present ceiling, ceiling in effect time of shipment, or market whichever is the highest to apply

• OPA discounts, CARS APPLIED

Point of Origin	Car Initials	Car Number	R.R.	Date B.L.	Inspection Grade	Inspection Moisture	Inspection Weight Bushel	Inspection Damaged	Date Unloaded	Bushels	Advance Draft
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]			[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]					[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]					[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]					[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]					[illegible]	[illegible]

549

DEFENDANTS' EXHIBIT 85

Expires—1 2 3 4 5 6 7 8 9 10 11 12 ... 27 28 29 30 31

PENICK & FORD, LTD.
INCORPORATED

GRAIN DEPARTMENT
CORN GRINDING PLANT
CEDAR RAPIDS, IOWA

CORN, SUGAR CANE AND MAPLE PRODUCTS

MEMBERS
Grain Dealers National Ass'n
Western Grain Deale. Ass'n

Cedar Rapids, Iowa 2/6/46

Contract No. 4474

Name Daniel F. Rice & Company

Address Board of Trade Bldg., Chicago, 4, Ill.

We confirm purchase from you today of 1 Cars of 2 y Corn

For shipment within 60 days at ceiling * cents a bushel basis St. Louis

For shipment to Cedar Rapids, Iowa, subject to Cedar Rapids weights and inspection.

REMARKS:- Plus 2-1/2y merchandising
OPA discounts
*present ceiling, ceiling in effect time of shipment, or market whichever is the highest to apply

CARS APPLIED

Sale Number	Point of Origin	Car Initial	Car Number	R R	Date B/L	Date Notice Arr.	Inspection Grade	Moisture	Wt per Bushel	Damaged	Discount	Date Unloaded	Bushels	Advance Draft
[illegible]	Concert	[illegible]	860	[illegible]	2/5	4/14	5y	[illegible]	44.5	4.0	10 3/4	7/20	1451	44 [illegible]

Vol 553

DEFENDANTS' EXHIBIT 86

Exhibit 19

Expires: 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

GRAIN DEPARTMENT
CORN GRINDING PLANT
CEDAR RAPIDS, IOWA

PENICK & FORD, LTD.
INCORPORATED

CORN, SUGAR CANE AND MAPLE PRODUCTS

MEMBERS
Grain Dealers National Ass'n
Western Grain Dealers Ass'n

Cedar Rapids, Iowa 2/1/4[illegible]

Contract No. 44[illegible]

Name [illegible]rmill, Inc.,

Address [illegible]

We confirm purchase from you today of [illegible] Cars [illegible] Corn

For shipment within [illegible] [illegible] basis CHICAGO [illegible] XXI [illegible]

For shipment to Cedar Rapids, Iowa, subject to Cedar Rapids weights and inspection

REMARKS —

[illegible]

OPA discounts

CARS APPLIED

486

Vol. 555

DEFENDANTS' EXHIBIT 87

Exhibit H

Expires 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

GRAIN DEPARTMENT
CORN GRINDING PLANT
CEDAR RAPIDS IOWA

PENICK & FORD, LTD.
INCORPORATED

CORN, SUGAR CANE AND MAPLE PRODUCTS

Grain Dealers National Ass'n.
Western Grain Dealers Ass'n.

Cedar Rapids, Iowa 2/2/46

Contract No. [illegible]

Name Daniel F. Rice & Co.,
[illegible]
Address Chicago, Ill.

[illegible] 1 Cars [illegible] TY

[illegible] 60 days [illegible] at [illegible]-1/4 [illegible] CHICAGO Peoria

[illegible]

Includes 1- [illegible] ¢ [illegible] dising charge
discount.

Sellers [illegible]
ceiling [illegible]

CARS APPLIED

[illegible]

[fol. 557]

DEFENDANTS' EXHIBIT 88

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE

No. 530

THE NATIONAL ARCHIVES

[Emblem]

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I CERTIFY That the annexed copy, or each of the specified number of annexed copies, of each document listed below is a true copy of a document in the official custody of the Archivist of the United States.

FROM THE RECORDS OF THE OFFICE OF WAR MOBILIZATION AND RECONVERSION:

Letter dated May 1, 1946, from Chester Bowles to the Honorable Will Clayton.

IN TESTIMONY WHEREOF, I, WAYNE C. GROVER, Archivist of the United States, have hereunto caused the Seal of the National Archives to be affixed and my name subscribed by the Chief Archivist, Industrial Records Branch of the National Archives, in the District of Columbia, this 13th day of March 1953.

/s/ WAYNE C. GROVER
Archivist of the United States

By /s/ PAUL LEWINSON

[Seal]

GSA Form 86
August 1950
(Formerly NA 42)

[fol. 558]

[Handwritten notation—grain, corn, wheat.]

May 1, 1946

Honorable Will Clayton
Assistant Secretary of State
Washington 25, D. C.

Dear Will:

Thank you for your letter of April 23 relative to the problem of obtaining additional grain for shipment to the famine areas of the world. We certainly are in complete agreement on the absolute necessity for taking strong action to see that the maximum amount of food is sent to these areas.

I agree with you that excessive amounts of corn have been fed because of the very favorable hog-corn price relationships that have existed for the past several years. You noted, I am sure, that in my letter of April 4 to Secretary Anderson we recognized this fact and made certain specific recommendations relative to hog prices which we felt would help in correcting the situation. Our suggestions are not accepted on these points.

Any material increase in corn prices would undoubtedly force us either to increase subsidies on most livestock, dairy, and poultry products or permit substantial increases in the prices of all of these commodities. Not only would it force price adjustments in these livestock and poultry products, but the pressure would be terrific to have us increase prices of wheat and other grains to a parity relationship with the higher corn ceiling. It is my opinion that this is more than the stabilization program can stand right now, so I decided that the best alternative is to pay a subsidy on wheat and corn marketed during the weeks immediately ahead.

As to the present level of corn prices, the Department of Agriculture advises us that it is sufficiently high to enable them to achieve the production goals they have set. It is, therefore, not an impediment to production goals.

In more than one instance it has been brought forcefully home to us that price squeezes are not the only reason—in fact I doubt whether they are the principal reason—for black markets developing. Black markets for the most part are the result of scarcity rather than prices. For instance, black markets have been prevalent in whisky, and there [fol. 559] definitely was no squeeze on whisky prices. The same was true of gasoline. In periods of extreme scarcity relative to the demand black markets probably will develop in spite of any reasonable price. With the present demand for corn, I am convinced that an increase in ceiling prices would not cure the situation, but would mean that the black marketeer would start adding his illegal premium to a higher base. I do not feel that the government should put itself in the position of establishing ceiling prices at whatever level prevails in the black market.

Under the present program whereby C.C.C. pays a premium of 30 cents per bushel for wheat and corn delivered to them, it definitely puts that agency in a favored position to get the supplies they need. I believe it is the only possible way—short of requisition—to get the amount of grain they need in the time remaining. Certainly an increase in ceiling prices would merely mean that C.C.C. would have to continue to compete with feeders and industries and on a higher price level.

You may be sure that we shall continue to work toward the best possible solution of this problem of meeting our commitments to the needy of the world. We will appreciate it if you will give us the benefit of any suggestions you may have at any time.

Very sincerely yours,

Chester Bowles
Director

cc: Mr. Bowles
Dean McNeal
Paul Duncan

McNeal:JFBrownlee:ame

[fol. 560]

DEFENDANTS' EXHIBIT 89

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE

No. 531

THE NATIONAL ARCHIVES

[Emblem]

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I CERTIFY That the annexed copy, or each of the specified number of annexed copies, of each document listed below is a true copy of a document in the official custody of the Archivist of the United States.

FROM THE RECORDS OF THE OFFICE OF WAR MOBILIZATION AND RECONVERSION:

Memorandum dated May 2, 1946, from Robert H. Shields to Secretary of Agriculture.

IN TESTIMONY WHEREOF, I, WAYNE C. GROVER, Archivist of the United States, have hereunto caused the Seal of the National Archives to be affixed and my name subscribed by the Chief Archivist, Industrial Records Branch of the National Archives, in the District of Columbia, this 13th day of March 1953.

/s/ WAYNE C. GROVER
Archivist of the United States

By /s/ PAUL LEWINSON

[Seal]

GSA Form 86
August 1950
(Formerly NA 42)

[fol. 561]

To: Secretary of Agriculture

From: Robert H. Shields, Administrator

Subject: Corn Situation

In my memorandum of May 1 with reference to the grain situation it was indicated that good progress is being made under the corn purchase program and it was anticipated that the 50 million bushels would be acquired within a relatively short period of time. It was indicated further that on the basis of arrangements made to date, it appears that the export program for the next 90 days with respect to corn and corn products acquired through the purchase program would be approximately as follows:

Exports as whole corn—6 million bushels per month, total for period	18 million bushels
Exports as meal and grits (from dry milling industry)	10 " "
Exports as food starch, sirup, and corn sugar (from wet milling industry)	7 " "
TOTAL	35 million bushels

This would leave approximately 15 million bushels for domestic use, of which about 1 million would be required for serum hogs, leaving 14 million bushels which might be divided roughly 50-50 between the dry and wet milling industries. With such a quantity of corn it would be possible by supplying corn only to wet and dry millers in the worst inventory position to keep these industries operating at the level permitted by existing war food orders until about June 15.

Only one wet corn processor has sufficient inventory of corn to insure continuous operation much beyond July 1 and that processor probably will run out before the first of September. We have relatively little information with re-

spect to the inventory position of dry millers but it is probable that most of them will be shut down by July 1 if only about 7 million bushels are supplied to them under the corn purchase program.

[fol. 562] We must formulate plans immediately for handling the corn situation for the remainder of this crop year and a sound program should be worked out with the Office of Price Administration and the Director of Economic Stabilization in order that we may avoid in 1946-47 the chaotic situation that developed in 1945-46. With respect to the immediate situation the following 3 alternatives are suggested for consideration:

1. Complete the present corn purchase program as quickly as possible and get out of the market, with no price changes.
2. Extend the corn purchase program to permit purchases up to 125 million bushels and postpone temporarily any changes in price ceilings.
3. Complete the corn purchase program as quickly as possible and increase price ceilings on corn by 25 or 30 cents per bushel immediately following termination of the purchase program.

Alternative No. 1 would, in our judgment, bring about the following conditions:

(a) Marketings of corn will dwindle to almost nothing except for such quantities as are marketed as a result of barter deals and black market operations.

(b) Both the wet and dry processing industries will be largely shut down after about July 1 except where they acquire corn indirectly through black market and barter operations. When corn is thus acquired the products go largely to less essential industries, such as, confectioneries and soft drink manufacturers who, according to reports, have been active in acquiring corn by black market operations. Practically no corn will be available to

feeders and mixed food manufacturers in the deficit areas.

(c) There will be no assurance of any over-all correction in the grain situation for the 1946-47 year.

Alternative No. 2 offers the following advantages:

(a) The 125 million bushels of corn, if acquired, would provide the 35 million bushels of corn for carrying out the export program described above; 44 million bushels of corn required to keep wet corn industry operating at the rate authorized in WFO-145 until new crop corn is available; 35 million bushels of corn for the dry milling industry which might be adequate to keep that industry operating at the level authorized under WFO-145 until new crop [fol. 563] corn becomes available; provide 1 million bushels of corn for serum hogs; and a reserve of 10 million bushels of corn for exports after August 1 or for other purposes.

(b) It would permit some postponement in adjustments in grain ceilings, but prior to the beginning of the 1946-47 marketing year all grain ceilings should be adjusted to the levels which appear desirable for the entire 1946-47 marketing year.

On the other hand, alternative 2 has the following disadvantages:

(1) It offers no answer to the food problem in the deficit areas. In fact, the absorption by the Government of virtually all market supplies of corn and the allocation of this corn to export, and to processors and dry millers would further reduce supplies of food available to deficit food areas and make us more vulnerable to charges of discrimination against (a) feeders and feed mixers and (b) flour mills and bakeries which will not be assured of a supply of raw materials comparable to that

being assured to corn processors, dry millers, and their customers.

(2) The subsidy cost to the Government would be increased by $22,500,000.

Alternative No. 3 would:

(a) Avoid an increase in the amount of subsidy funds required to carry out the grain program in 1946;

(b) provide feeders and feed mixers in deficit areas an opportunity to obtain a more adequate share of the available corn supplies than under alternatives 1 or 2; and

(c) would not place the Department in the position of having discriminated against feeders, feed mixers, flour millers, and bakers.

On the other hand, while wet processors and dry millers would be able to purchase more corn than under alternative 1 they would not be assured of adequate supplies of corn to maintain continuous operation at authorized levels, and more of their products would go for less essential uses than under alternative 2.

[fol. 564] Looking ahead to the 1946-47 marketing year, the following should be kept in mind.

1. Before the beginning of the marketing year for each grain the ceilings should be established at a level which will make it unnecessary to make changes during the marketing year and which will not cause serious maladjustments in supplies during the year.

2. Grains cannot be successfully rationed among feeders and war food orders or Government purchase programs designed to allocate grains among industrial users and feed mixers are poor substitutes for proper price relationships.

3. With the probability of continuing food shortages in 1946-47, we cannot afford again to use too much of our

grains for feed and then be short of grain for the more efficient industrial and direct food uses of grain. Adequate supplies of grain for non-feed uses can be assured only if grain prices are slightly on the high side in relation to livestock prices.

If livestock and poultry prices are maintained at present levels an increase of 25 to 30 cents per bushel in the corn ceiling and 5 to 10 cents per bushel in the ceilings for other grains might provide a satisfactory level of grain price ceilings for the 1946-47 marketing year.

These adjustments should be made immediately following the termination of the corn purchase program in the case of corn, and not later than June 1, 1946 in the case of other grains.

We recommend that alternative No. 3 be adopted with respect to corn and that prompt steps be taken to effectuate not later than June 1, 1946, the price ceiling changes indicated above.

CCFarrington:NF
5-2-46

[fol. 565]

DEFENDANTS' EXHIBIT 90

GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE

No. 301

THE NATIONAL ARCHIVES

[Emblem]

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I CERTIFY That the annexed copy, or each of the specified number of annexed copies, of each document listed below is a true copy of a document in the official custody of the Archivist of the United States.

FROM THE RECORDS OF THE OFFICE OF PRICE ADMINISTRATION:

Page 3 of Weekly Highlight Report No. 26 dated April 4, 1946, from Robert Marks, Chief, Regional Food Enforcement Section, Chicago, Illinois, to Herman Greenberg, Director, Food Enforcement Division, Washington, D. C.

IN TESTIMONY WHEREOF, I, WAYNE C. GROVER, Archivist of the United States, have hereunto caused the Seal of the National Archives to be affixed and my name subscribed by the Chief Archivist, Industrial Records Branch of the National Archives, in the District of Columbia, this 8th day of December 1952.

/s/ WAYNE C. GROVER
Archivist of the United States

By /s/ PAUL LEWINSON

[Seal]

GSA Form 86
August 1950
(Formerly NA 42)

of their friends in the country area and because they are better situated with respect to getting out in the country with trucks. The farmers in that area have reported that because of bad corn, the movement of cattle to market has been delayed until the end of April or the middle of May when normally it would be ready for market, now. This report, too, indicates that a good amount of cattle is moving from local auction sales and farms to country and small slaughterers and is not reaching the stockyards. Here again a restoration of the control order will permit these offices to move quickly on that problem. *We cannot stress too much that all of you should be ready to move quickly against this large number of small slaughterers if and when the control order is restored so that we may quickly reproduce the success of our last spring's meat enforcement program.*

Groceries and Dairy Products: Corn remains a problem in all districts. In fact, as Omaha points out, as more corn moves out and the supply becomes smaller the pressure becomes greater. In fact, they say the pressure is so great that a good amount of corn is moving out now which would ordinarily be held by farmers until the next crop, with the result that in the late summer and fall we may anticipate an even shorter corn supply. The Omaha criminal corn case referred to in our last report has grown so in size that it is now the subject of an integrated investigation and will probably involve from 75 to 100 elevators and large processors before it is completed. On the crib leasing problem raised last week, we are advised that the Omaha company that began the practice has temporarily stopped pending a visit by their men to the National office. The company will then determine whether to discontinue the practice permanently or have the Court determine whether the practice is a violation, as we say it is. Burnell Hendrikson reports from Sioux Falls that the side-payment offered by processors has become so brazen that there is no limit to the extent to which these processors will go. When the Omaha criminal case is completed and filed it will shatter a lot of the ego of these processors.

Des Moines states that most corn is earmarked for special buyers before it is received by country shippers which proves, as Burnell has indicated, that processors are negotiating directly with producers and having the corn shipped through particular agents. Des Moines indicates, too, that many farmer trucker merchants in the area have now made arrangements either with established merchants or new merchandisers (often members of their own family) to act as common carriers with respect to corn purchased for the account of these merchandisers because common carriers rates usually exceeded "hauling allowances" under the regulation. Des Moines, incidentally, has developed a good number of corn cases this month as we will indicate in our next report. Omaha again reports that the corn situation

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[fol. 567]

DEFENDANTS' EXHIBIT 91

UNITED STATES [EMBLEM] OF AMERICA

FEDERAL TRADE COMMISSION

I, D. C. Daniel, Secretary of the Federal Trade Commission, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of:

Report on Economic Effects of Grain Exchange Actions Affecting Futures Trading during the first six months of 1946 entered by the Federal Trade Commission February 4, 1947.

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused the seal of the Federal Trade Commission to be affixed this 30th day of March, A. D. 1953, at Washington, D. C.

/s/ D. C. DANIEL
Secretary.

[Seal]

F.T.C. 111

[fol. 568]

Federal Trade Commission

Report on

ECONOMIC EFFECTS OF GRAIN EXCHANGE ACTIONS AFFECTING FUTURES TRADING DURING THE FIRST SIX MONTHS OF 1946

February 4, 1947

[fol. 569]

FEDERAL TRADE COMMISSION

Garland S. Ferguson, Chairman
Ewin L. Davis
William A. Ayres
Robert E. Freer
Lowell B. Mason
Otis B. Johnson, Secretary

[fol. 570]

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[fol. 571]

Report on

ECONOMIC EFFECTS OF GRAIN EXCHANGE ACTIONS AFFECTING FUTURES TRADING DURING THE FIRST SIX MONTHS OF 1946

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Report of the

FEDERAL TRADE COMMISSION

on

ECONOMIC EFFECTS OF GRAIN EXCHANGE ACTIONS AFFECTING FUTURES TRADING DURING THE FIRST SIX MONTHS OF 1946

SUMMARY

BACKGROUND CONDITIONS

The history of the operations of the Chicago, Kansas City and Minneapolis grain exchanges during the first six months of 1946 constitutes a practical demonstration that the business of trading in futures contracts cannot be conducted "as usual" under a combination of shortages in supply, Government regulation of prices and severe restrictions as to the movement and disposition of already short supplies.

Shortage of corn became very evident when free corn could not be accumulated in deliverable position to satisfy July and September 1945 futures in Chicago. Similar difficulty was experienced in December with respect to both wheat and corn. Defaults in July and December 1945 corn and December 1945 wheat were settled at ceiling prices involving little or no penalty to defaulters. Also, the September 1945 corn contracts were closed out prematurely on August 2, 1945. These actions served as precedents for one or more subsequent actions by each of the three principal grain exchanges in closing out futures at ceilings either before maturity or when in default.

Several reasons contributed to the failure of the 1945 new crop movement of corn to bring relief in the futures market. An unusually large part of the crop was so damaged by early frosts as to be of low grade and of such high moisture content that it could not be stored in bulk until after drying.

The ceiling price value of corn per 100 pounds was low in comparison with that of other grains.1/ Corn, which was scarce, not only was the cheapest feed grain per 100 pounds, but also marketing it in the form of fattened livestock would yield the farmer a higher price than marketing it as grain. The basis for a black market was laid in the fact that the ceiling price undervalued corn both in relation to other grains and livestock. Corn practically disappeared from regular marketing channels.

The extent of growing shortages in all grains was not fully realized until after January 1, 1946. In the meantime the Government had obligated itself to deliver large quantities of wheat. War Food Order No. 144 (effective March 2, 1946) was adopted in order to assure supplies to meet Government commitments by requiring all grain merchants to offer to the Commodity Credit Corporation at the end of each week all stocks of wheat in excess of the quantity required to fill orders in hand having preference status. This made it impossible for grain merchants to accumulate and store wheat for more than one week in position for delivery on futures. Also the Government somewhat later began paying 25 cents per bushel

1/Ceiling price values per 100 pounds were as follows: Corn, $2.116 per cwt.; Oats, $1.531 per cwt.; Barley, $2.863 per cwt.; Wheat, $3.098 per cwt. The value of corn in relation to oats was quite abnormal as corn usually sells for more than oats by amounts sometimes 50 to 60 cents per cwt., especially when corn is scarce.

premium for corn in competition with the black market. These measures made it practically impossible to obtain free corn or wheat in regular marketing channels. Rye and barley were also critically short. Only oats were in fairly plentiful supply.

SHORT INTEREST BECOMES PREDOMINANTLY SPECULATIVE AND LONG INTEREST PREDOMINANTLY HEDGING

As one after another, the prices of principal grains reached ceilings, the only field for speculation became selling short against possible decrease in price below ceiling. This developed the abnormal condition that speculative interest shifted predominantly to selling short at ceiling prices. Confidence that this could safely be done was engendered among speculators by the fact that defaults were settled at ceilings in 1945, which meant no penalty to shorts who had sold at ceiling. The result was that short speculative interests who gave no thought to whether they could or would attempt to make delivery on futures came to be aligned opposite long interests consisting predominantly of hedgers who had made forward cash commitments. This meant that with grains in short supply longs would stand for delivery, thereby freezing shorts in their short positions and forcing large defaults. The general conditions outlined above constitute the background for the study made of the economic effects of actions taken by the Boards of Trade of Chicago, and Kansas City, and the Chamber of Commerce of Minneapolis during the first six months of 1946.

CHICAGO BOARD OF TRADE ACTIONS

The management of the Chicago Board of Trade followed a vacillating course of action during the difficult period from February to June, 1946. Its first action was to close out prematurely all May 1946 wheat futures outstanding on March 26 at the then prevailing ceiling. Its second action was to follow the request and recommendation of the Office of Economic Stabilization, the Office of Price Administration and the Department of Agriculture in restricting trading in old futures of all grains outstanding on May 11, to trades for liquidation at the ceiling prices prevailing before May 13. It also announced that it would give no consideration to increases in ceiling prices in considering any penalties on defaults arising through refusal of sellers to deliver grain on futures contracts outstanding May 11. This publicly served notice that there would be no penalties for defaults. Naturally, no short would deliver cash grain that was worth from 5 to 25 cents more than the old futures. The result was heavy defaults in all outstanding futures for all grains maturing in May.

This action failed to protect the validity of futures contracts and released short speculators from all financial responsibility under their contracts in excess of the old future price. It was followed almost immediately by the Cargill case charging price fixing in violation of the Sherman Act and suing for triple damages.

Faced with this suit and with 14,639,000 bushels of defaults in May corn, oats and barley contracts on May 31, and having been unable to obtain a Government directive supporting the three agency request and recommendation of May 8, the Board of Directors reversed itself on May 31, by ordering the defaulted contracts settled at the new ceiling prices which became effective on May 13. This action assessed upon defaulting shorts the full increase in ceiling prices of May 13, an action which the management had stated on May 12 it would not take.

The management still further reversed its May 12 action on May 31 by ordering the reopening of trading in all old futures of wheat, corn, oats, rye and barley outstanding on June 1 at prices not in excess of the new (May 13) ceiling prices, such

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reopening of trading to occur on June 3, 1946. Prices, except distant-month oats futures, promptly moved up to the new ceiling with little or no trading and continued to adhere firmly to ceilings for all grains except oats. This had the effect of assessing upon those short of old futures on June 1 for all futures, except certain contracts in oats, the full financial burden of the ceiling price increase of May 13.

On June 13, 1946, the Board of Directors again closed all trading and ordered immediate settlement of all old futures except July, September and December oats and December barley. The Board also closed out all new futures for wheat and rye, trading in which had been authorized on May 13. All these futures (except oats) were forthwith prematurely closed out on June 13, at the new (May 13) ceiling prices.

The effect of this action was to definitely place upon all open short interests the entire financial burden of the May 13 ceiling price increases, but to free them of financial responsibility for any price increases that might occur after June 30, on which date it was anticipated ceiling price controls would terminate.

INCIDENCE OF FINANCIAL LOSSES AND GAINS

The essential feature of futures trading is that what is financial gain to those in open position on one side of the market is loss to those on the other side. It, therefore, is interesting to note where losses and gains resulting from the actions of the Chicago Board of Trade from March 26 through June 13 fell as well as their amounts. Based on windfall profits arising out of the ceiling price increases of March 4 and May 13, the incidence of losses and gains may be summarized in paragraphs numbered 1 to 3 below:

1. The premature closing out of 9,492,000 bushels of May 1946 wheat contracts on March 26 gave longs the benefit of the March 4 increase of 3 cents per bushel, or a total of $246,760. On the other hand, as events transpired, it protected shorts to the extent of 15 cents per bushel on any part of this quantity that might have remained open and in default on May 31. At its maximum, based on the assumption that all remained open, the saving to shorts would have been $1,423,800. On the basis of the rate at which July wheat contracts were liquidated from March 27 through May 31, about 80 percent of this amount or $1,039,000 might be counted as potential saving to shorts.

2. Respecting old contracts open May 11 that were ordered traded out at the old ceiling, the final incidence of profits and losses through the June 13 closeout may be summarized as follows:

Item	Bushels	Amount	Percent
1. Saving to shorts through liquidating trading at the old ceiling May 13-31	15,906,000	$1,490,538	15.6
2. Profit to longs:			
Profit on May futures in default May 31 and settled at the new ceiling prices	14,639,000	1,846,638	19.4
Profit on open positions closed out by open trading at new ceilings June 3-13	1,310,000	221,330	2.3
Profit to longs on open positions closed out on June 13 at new ceilings	28,466,000	4,[illegible],290	50.[illegible]
Potential profit to longs on oats contracts open June 1 but not closed out on June 13	23,907,000	1,196,360	12.6
Total profit to longs	68,504,000	8,010,800	84.5
Total futures affected by restrictive trading and closeout orders May 13-June 13	84,412,000	$9,501,338	100.00

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Although the regulation of May 13, if carried through to June 13 with respect to all old futures, including oats, would have saved shorts a total of more than $9,500,000, the final outcome, due to the fact that their protection was ultimately limited to saving on liquidating trades between May 13 and May 31 at old ceiling prices was actually limited to $1,490,530, or just under 16 percent of that amount. The balance of 84.3 percent went to longs who stood on their rights under their contracts up to the final closeout on June 13.

Stated in another way, what this means is that the action of May 12, had it not subsequently been reversed on May 31, would have relieved the membership of the Board of Trade, and particularly the members of the Clearing Corporation, of the necessity of finding some $9,500,000, either of their own funds or those of their customers, to maintain the solvency of the Clearing Corporation. To the extent that members put up their own funds to cover undermargined accounts of customers, they would have faced the necessity of collecting from their customers. This situation would have prevailed so long as supplies of grain were unavailable, or were available only at higher prices, for delivery on futures, and also, so long as shorts were frozen in their open positions by refusal of longs to trade. Therefore, whatever protected shorts in general also protected exchange members. As events transpired, however, the May 12 action of the Board of Directors protected shorts to the extent of about one-sixth of the total amount involved in the ceiling price increases while its reversal of that action on May 31 gave longs the benefit of the remaining five-sixths.

3. The closeout on June 13, however, protected shorts against further losses due to price increases after June 30. Since there was no trading after June 13 in the futures closed out, there is no means of knowing what the price history of futures would have been. However, based on the movement of cash prices from July 1 through September 30 it is possible to make a rough estimate based on the average of available spot prices of grains for which July, August and September contracts were closed out on June 13. This estimate would indicate that shorts could count on additional saving on 23,012,000 bushels of July, August and September wheat, corn, rye and barley contracts closed out as of June 13, of the order of $7,569,000.

What this means is that the members of the Clearing Corporation and their short customers were relieved of the necessity of finding this much additional cash to maintain the validity of the contracts maturing in the months of July, August and September, 1946.

Some $6,659,000 of this would have had to be found to maintain the validity of corn and rye futures, both of which were in very short supply. Trading in these futures had been fostered for nearly a year by the precedent set in 1945 of closing out defaults at ceiling prices, thereby giving speculative shorts a feeling of assurance that they could sell futures in grains that, in effect, did not exist without fear of penalty beyond the ceiling price. At the same time short hedgers practically disappeared from the market; first, because with the market definitely pointing upward there was little incentive to hedge, and second, because any short hedge that could not be lifted when grain hedged was sold became a distinct hazard rather than an insurance in case of a price increase.

With long open interests consisting largely of hedgers who would stand for delivery, and with short interests consisting mainly of speculators who sold without concern as to their ability or responsibility to deliver, trading on the exchange floor was reduced practically to trading in puts and calls to be settled by the payment of differences. The theory that every future contract is a contract for grain, or contemplates delivery of grain, was reduced to mere fiction. The effect was to effectively sever the always more or less tenuous connection between the futures

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contract and the physical marketing of grain without which futures trading ceases to be a useful adjunct to the marketing of grain.

KANSAS CITY BOARD OF TRADE ACTIONS

On February 18, 1946, immediately after War Food Order No. 144 was issued, the Board of Directors of the Kansas City Board of Trade prohibited trading in May 1946 wheat except for liquidation, and on March 28, all May wheat contracts still outstanding were prematurely closed out at the then prevailing ceiling of $1.73-5/8 per bushel. A total of 2,850,000 bushels of May 1946 contracts was so closed out, with those in long positions getting the protection of the March 4 ceiling price increase of 3 cents per bushel, This amounted to $85,500.

On May 11 there were 4,199,000 bushels of old wheat futures for July and later months open on the Kansas City Board. On May 13 the management restricted trading in these futures to liquidation at the old ceiling of $1.78-5/8 per bushel. From May 13 to June 5, 930,000 bushels were traded out on this basis. On June 5, the Board of Directors made the new ceiling prices applicable and ordered all trading to be continued for liquidation. There were no trades until the price reached the new ceiling of $1.88-5/8 (effective May 13) and thereafter, from June 7 to 13, a total of 680,000 bushels was traded out, leaving 2,589,000 open on June 13. This last quantity was prematurely closed out by order of the management at $1.88-5/8 per bushel.

The financial gains and losses to shorts and longs covering all closeouts at ceiling prices by regulations of the Kansas City Board of Trade from March 28 to June 13, 1946, may be summarized as follows:

Item	Bushels	Amount	Percent
Protection to shorts at expense of longs through liquidating trades May 13 - June 5 (computed at 3¢ per bu.)	[illegible]	[illegible]	[illegible]
Profit to longs at expense of shorts on liquidating trades and premature close-outs June 5-13 (computed at 15¢ per bu.)	[illegible]	[illegible]	[illegible]
Profit to longs on premature close-out of May wheat on March 28 (computed at 3¢ per bu.)	[illegible]	[illegible]	[illegible]
Total contracts closed out	[illegible]	[illegible]	[illegible]

Shorts were protected to the extent of 19.5 percent of the total of $715,350 and longs were benefitted at the expense of shorts to the extent of 80.5 percent. Most of the profit to longs was realized on closeouts at the new ceiling price after June 5.

In addition, the closing out of all old futures on May 13 in anticipation of the expiration of price controls on June 30 protected shorts against possible further losses in case the price of wheat advanced sharply after July 1. The price of cash wheat did advance after July 1 and averaged for the month of July about 8 cents higher than the May 13 ceiling price. The average of September cash quotations also was higher than the May 13 ceiling by about 6 cents per bushel. It would seem that shorts whose July and September contracts represented the bulk of the Kansas City futures closed out on June 13 might count additional protection of the order of these amounts per bushel.

Since May wheat was closed out on March 28, there were no defaults in Kansas City on May 31. Also, in the closing out of other contracts on June 13, little difficulty

appears to have been experienced in bringing traders together for settlements, either by delivery of grain or by cash settlements through the Clearing Association. No lawsuits resulted in Kansas City from actions taken, whereas in Chicago, lawsuits resulted both from the May 12 and subsequent actions of the Board.

MINNEAPOLIS CHAMBER OF COMMERCE ACTIONS

The Board of Directors of the Chamber of Commerce of Minneapolis took the lead in restricting trading and closing out to contracts by ordering trading for liquidation only in its May and July 1946 wheat contracts beginning on February 18; the date on which War Food Order No. 144 became effective. This was followed on March 12 by a regulation closing out all open contracts in May 1946 wheat as of March 13, 1946. This action respecting May 1946 wheat antedated by about two weeks similar actions by the Chicago and Kansas City Boards closing out May 1946 wheat contracts. It also was the only such action taken by the Minneapolis Chamber of Commerce.

When the May 13 ceiling prices became effective, the Minneapolis Chamber made the new ceilings effective on all futures being traded on its floor. Futures then being traded were July wheat (for liquidation only), September and December wheat, and May, July and September oats. Open trading was continued in all contracts other than July wheat.

One basic reason given by the Minneapolis Chamber for not following the request and recommendation of the Office of Economic Stabilization, the Office of Price Administration and the Department of Agriculture that all old contracts outstanding on May 11 be liquidated at the old ceiling was that the action recommended would have undermined the validity of futures and destroyed their value as hedges. Another basic reason given was desire on the part of the Chamber's Board of Directors to avoid assuming the responsibility of determining the profits and losses of traders before maturity of contracts.

The next significant action of the Minneapolis Chamber was on June 13 when trading in all open wheat contracts was restricted to trading for liquidation only, and at the May 13 ceiling. Open trading on oats was continued as before. Again, the reason ascribed for not closing out wheat contracts altogether, as was done on the other exchanges, was desire to protect the validity of futures to the maximum degree. This was followed on June 30 by rescinding ceiling prices altogether. This action, effective July 1, left all futures prices free to move upward, but continued the restriction of trading in all wheat contracts outstanding to liquidation only. Open trading in July, September and December oats was continued.

EFFECTS OF MINNEAPOLIS CHAMBER ACTIONS

The outstanding effect of Minneapolis actions was maximum preservation of the validity of futures contracts by holding the predominantly short speculative interest in the market financially responsible for working out by negotiation with the long interests in the market (consisting predominantly of long hedgers) the most satisfactory arrangements possible under the circumstances to bring about liquidation of open positions as the various contracts matured. In this it was recognized that the supply situation respecting wheat was such that agreed-upon cash settlements rather than delivery of wheat probably would be necessary. To make this possible, the Chamber's Business Conduct Committee urged longs and shorts to negotiate settlements and Clearing Association rules were relaxed to the extent necessary to accept and clear on the basis of reasonable agreements negotiated between longs and shorts so that there would be no defaults at maturity requiring Chamber action.

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Since wheat could not be controlled for more than one week, the method of liquidating contracts to the satisfaction of longs desiring wheat became as follows: A trader short, say of July wheat, might purchase either cash wheat or a to arrive contract. He would then find some miller or feed manufacturer with a long hedge in July wheat and negotiate an exchange of his cash wheat or to arrive contract for a like quantity of the July future, executing the futures trade on the floor of the exchange. Most open positions are stated to have been liquidated in this manner, mainly before the maturity date of futures contracts and the balance were liquidated by cash settlements between parties involving futures trades finally formally executed on the exchange floor. The greatest difficulty met is stated to have been to get speculators who were long to give up their positions for to arrive contracts.

Success of these efforts was undoubtedly facilitated by a cooperative spirit among traders, by the fact that the total volume was not large, and by the fact that there was little speculative interest either long or short located at such distance from the market as to make negotiation of settlements difficult.

The general effect of the procedure was to protect the interests of longs while placing the burden upon both longs and shorts to work out the best arrangements possible under the circumstances.

EFFECT ON PRESTIGE OF THE MINNEAPOLIS CHAMBER

Officers and directors of the Minneapolis Chamber of Commerce state it to be their belief that actions taken to protect the validity of contracts, preserve the responsibilities of traders, and avoid assumption by the management of responsibility for determining profits and losses of traders were economically and legally sound in principle, and conducive to the welfare and public prestige of their association.

EFFECT ON FARM PRICES

One important effect to be noted, which became very evident in Minneapolis Exchange operations, was the effect of lack of a futures market, especially for wheat, in which new hedges could be placed by merchants and processors when the new crop really began to move. When prices went up sharply after July 1, the entire burden of risk in purchasing and storing wheat fell upon country buyers, terminal grain merchants and processors. The situation was accentuated by the transportation shortage which caused grain to pile up in country elevators even though its owners had orders on which it might have been shipped had cars been available. Country buyers and terminal grain merchants, alike, then protected themselves by bidding less for grain in the country. Country buyers bid low prices to the farmer to cover their risk or took his grain for storage subject to pricing later when sold. The latter course shifted the entire burden of risk to the farmer. The effect was lower prices in the country. It is a notable fact that the price of cash wheat sagged in the latter part of July.

Representations as to the need for a futures market in wheat were received by the Minneapolis Chamber of Commerce. Thereupon, on July 30, as soon as paragraph (m) of War Food Order No. 144 was suspended, the Chamber reopened trading in September and December wheat futures. Speculators, however, were unwilling to buy the shippers' short hedges with the future price trend uncertain. The price of cash wheat continued to be only a few cents above the May 13 ceiling price throughout August and showed little tendency to increase until September.

CONCLUSIONS

WHERE RESPONSIBILITY LIES

Events of the first six months of 1946 demonstrate from a new background of practical experience that failure of exchange managements to protect the validity of future contracts results in severe loss of public confidence. Loss of confidence was due primarily to pursuit by exchange managements of a vacillating policy which failed to insist that traders perform in accordance with the terms of contracts traded. In this, the Chicago Board, having least effectively steered a straight course in accordance with the fundamental principles of validity of contracts and responsibility of traders, bears the heaviest burden of public criticism.

In the regulation adopted May 12, 1946, effective on May 13, 1946, the Board of Directors of the Chicago Board of Trade stated that the Office of Economic Stabilization, the United States Department of Agriculture and the Office of Price Administration had "requested and recommended to governing boards of the Grain Exchanges that all futures contracts open at the close of business May 11, 1946, be settled at the then applicable ceiling prices." This recommended action was taken by the Chicago and Kansas City Boards of Trade but not by the Minneapolis Chamber of Commerce.

Conditions leading up to these actions had been developing for more than a year. In retrospect it may be questioned whether any exchange management took action at the proper time to forestall the difficulties met during the critical period. Exchange managements generally admit that such actions as were taken were tardy. This constitutes an admission either that they failed to recognize or, having recognized, failed to heed warnings of the storm that broke early in 1946. These warnings became very definite in 1945 when, with speculative interests predominantly in short position facing long interests who were predominantly hedgers who would not trade their open positions for anything but grain, the shorts were frozen in their positions and large defaults occurred. Nevertheless, exchanges closed out these defaults at ceilings. This meant little or no penalty to shorts. Continued speculation at ceilings in contracts for later months then open for trading was fostered with disastrous results later.

DUALITY OF INTEREST AND PARTIALITY OF ACTION

In accounting for acts either of omission or commission it is to be recognized that the individual members of exchange managements who govern the market place and determine both the terms of contracts and times when they may be traded are not wholly disinterested agents in the management of the market place.

This question of duality of interest on the part of management personnel is by no means a new one. About it controversies have centered in the Chicago Board of Trade for more than 50 years in which some important group of traders, such as warehousemen, or commission merchants, or one or both acting in cooperation with other membership groups, have been accused of dominating the Board's management and using its powers to their own advantage and to the disadvantage of other members as well as of both producers and consumers of grains and grain products. Latest among these controversies in Chicago is the charge of some members who were in long position as hedgers and were injured by actions taken on May 12 and June 13, 1946, that the very broad powers for emergency action under Rule 251 were consistently used only for the protection of short interests and commission houses. Also in Minneapolis, members of the Chamber's Board of Directors state that preservation of the machinery of trading to provide even a small opportunity

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for commission broker operations was a factor influencing the continuance of open trading even after prices went to ceilings and other factors beyond the control of the Chamber were such as to make pertinent the question as to whether futures trading might better have been discontinued altogether.

Both State and Federal laws have been enacted to provide regulation in the public interest found to be necessary because boards of directors occupying positions of dual interest in the management of exchanges do not always act impartially in the management of exchanges. Yet the experiences of the first six months of 1946 would seem to indicate that present regulation might be materially strengthened and made more effective if it included power not now provided to advise respecting and regulate exchange policies and acts at the management level if and when exchange managements deviate from economically sound and equitable policies and practices. Such exercise of regulatory power would be preventive rather than punitive.

THE COMMODITY EXCHANGE ACT

The Commodity Exchange Act, in effect, sets up two administrative authorities and procedures to deal respectively with exchanges and traders thereon. Authority to designate "contract" markets rests with the Secretary of Agriculture. If the Secretary refuses to so designate any exchange applying for designation, the exchange may appeal to a commission consisting of the Secretary of Agriculture, the Secretary of Commerce and the Attorney General for review. In addition, this Commission also has sole power to suspend or revoke any contract market designation. All decisions of the commission are subject to court review on appeal to United States circuit courts of appeal by exchanges or boards of trade affected.

The administrative power in proceedings against traders, however, rests with the Secretary of Agriculture who may initiate a complaint against any person (other than a contract market) for violation of the Act, and, after hearing, and upon evidence taken, may require all contract markets to deny trading privileges to such person for such period as may be specified in the Secretary's order. If the person is a registered commission merchant or floor broker, the Secretary of Agriculture may suspend, for a period not exceeding 6 months, or may revoke altogether, the person's registration. Orders of the Secretary, likewise, are subject to review by United States circuit courts of appeal on motion of persons affected.

Also the Commodity Exchange Act provides that each contract market shall "promptly furnish the Secretary of Agriculture copies of all by-laws, rules, regulations and resolutions made or issued by it or by the governing board thereof or any committee, and of all changes and proposed changes therein": The Act, however, does not in terms define any powers or duties the Secretary of Agriculture may have to advise respecting, approve, disapprove, or order change in policies involved or acts authorized or directed by the documents filed.

The intent of the law obviously is to hold both exchange managements and traders responsible for violations of its provisions. It, however, can hardly be maintained that the law has provided a basis for attaining its obvious purpose.

One of the criticisms aimed at Commodity Exchange regulation has been that regulatory proceedings have been directed at acts done by particular traders or groups of traders rather than at holding commodity exchange managements responsible for policies and acts either of omission or commission respecting the conduct of trading on their floors. Apparently this tendency is inherent in the situation. With outside regulatory authority set up by law, exchange managements seem prone to leave the responsibility for regulatory action to that authority. On the other

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hand, the Commission set up to regulate exchange actions (as distinguished from trader actions) consists of three heads of administrative departments, all of whom have many other administrative duties, and two of whom have little, if any, direct continuing interest in what is happening currently on commodity exchanges except as they are called upon to sit as members of the commission acting in particular proceedings.

It is suggested that, inasmuch as experience has indicated that the terms of the law provide not only an insufficient basis, but also somewhat inefficient administrative machinery, for accomplishing the law's intent, it would seem that the Congress may wish to give consideration to possible amendment to provide more effective functioning of regulation and larger exercise by public authority of preventive rather than punitive nature respecting the policies and actions of exchange managements if and when they deviate from sound and equitable practices.

THE UNITED STATES WAREHOUSE ACT

"The Secretary of Agriculture or his designated representative" administers the United States Warehouse Act. The Act deals mainly with two of several aspects of warehousing of interest in futures trading, namely, with the validity of warehouse receipts and preventing discriminations by warehousemen against persons using warehouse services. The basis for control is licensing, but only upon application of the warehouseman. Charging "unreasonable or exorbitant" rates for services may cause suspension or revocation of licenses.

The Warehouse Act does not touch at all upon numerous aspects of warehousing important in futures trading, and since licensing is voluntary on the part of warehousemen, its regulation in respect to those upon which it does touch is incomplete. In Minneapolis, for instance, no elevator regular for futures delivery is federally licensed, while in Chicago the proportion of regular houses federally licensed was about 86.8 percent in 1945. Neither does the Commodity Exchange Act relate the administration of the Warehouse Act to exchange operations except to make receipts of federally licensed warehouses tenderable on futures contracts provided such receipts are for the kind, quality and quantity specified in futures contracts, and the warehouse itself meets the physical requirements as to location, accessibility, and suitability for warehousing and delivery set up by the exchange for regular warehouses.

It would seem that the nature and scope of both the United States Warehouse Act and the Commodity Exchange Act should be so amplified and coordinated, or even combined, as to make effective the type and scope of regulation over futures trading contemplated by the Congress in enacting the Commodity Exchange Act. This suggestion applies particularly with respect to warehouses regular for delivery of commodities on futures contracts covered by the Commodities Exchange Act.

OTHER MEASURES

Today, after many years of legislative and regulative effort directed along lines of punitive action against traders rather than constructive policy and practice regulation at the exchange management level, some progress has been made, but there appears to be much yet to be accomplished. In Chicago, great speculative corners have become rare, but there has been little change in concentrated control of warehousing facilities or in the use of such facilities by merchandiser-operators to further their own purposes in both grain merchandising and futures trading. Contrary to a statement, based on misinformation, made in an earlier memorandum for the Committee, the principal elevators regular for delivery in Chicago still are

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owned by railroads and leased to private grain-merchant operators. In futures trading, merchandising interests, speculative interests, commission house interests, hedgers, and small floor traders sometimes oppose, and sometimes cooperate, as their business interests dictate. In Chicago, with the exception of three "nonmember" directors, the policy forming and policy directing board of 21 officers and directors are drawn from among these various interests. Realistic approach requires recognition that they would have to be something more than human if they left all considerations of personal or company interests outside the boardroom door when they meet to formulate policies and adopt rules and regulations for the operation of the exchange. Much the same situation exists in other exchanges.

At the same time partial regulation has not reached the heart of the problem which, after all, is the spirit of policy formation and application in exchange management. For instance, something more than lip service to the principles of validity of futures contracts and responsibility of traders is needed to ensure equitable management of exchange operations. Experience continues to point to the conclusion that the correction of conditions that periodically become explosive cannot be left altogether to an exchange membership and management individually and collectively bound by written agreement to observe and act in accordance with the charter, rules, and regulations of the association as provided by the Chicago Board's Rule 107, the Minneapolis Chamber's Rule 702 and the Kansas City Board's Preamble Agreement of Members.

Viewed in its entirety, therefore, it would appear that, in addition to strengthening and coordinating the Commodity Exchange Act and the United States Warehouse Act in ways suggested above, the Congress may wish to give consideration to embodying in Federal Law each of the following recommendations previously made by the Federal Trade Commission in 1937:

1. That all deliveries of grain on futures contracts shall be made from public warehouses:

(a) Licensed by Federal authority
(b) Subject to Federal regulation.
(c) Not owned, operated, or controlled, directly or indirectly, by any person, firm, or any other organization directly or indirectly dealing in grain.

2. That all deliveries of grain on any futures contracts shall be subject to:

(a) Federal grading and inspection.
(b) Federal regulation of the delivery of grain on such contracts.

3. That the storage charges for grain in public warehouses from which grain is deliverable on futures contracts as aforesaid shall be regulated by the Federal authority.

4. That every futures contract for grain on any futures market may be satisfied by the delivery of grain from any public warehouse operating in accordance with the provisions of paragraphs 1, 2 and 3 of these recommendations in not less than one market in addition to the market on which such contract is made, such outside market or markets to be determined in the discretion of the Federal authority.

5. That it shall be unlawful for brokers, commission men, officers, and large stockholders of companies doing a brokerage or commission business in futures for customers to speculate in grain futures for their own account.

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6. That exchange rules for delivery in cars and for settlement of defaulted futures contracts shall be interpreted and applied under Federal supervision.

The Commission's 1937 recommendations suggested strengthening commodity exchange regulation along lines similar to those provided in the Securities Exchange Act. Today, conditions in commodity exchange operation continue practically unchanged from what they were in 1937. Therefore, it would seem that the Congress may wish to give consideration to setting up regulatory organization and procedure for commodity exchanges similar to that now provided for securities exchanges insofar as measures now provided for the latter are applicable.

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Report of the

FEDERAL TRADE COMMISSION

on

ECONOMIC EFFECTS OF GRAIN EXCHANGE ACTIONS AFFECTING FUTURES TRADING DURING THE FIRST SIX MONTHS OF 1946

CHAPTER I

CHICAGO BOARD OF TRADE ACTIONS

SECTION 1. CHRONOLOGY AND SUBJECT MATTER OF ACTIONS

Principal actions taken by the Chicago Board of Trade which affected contracts and trading in futures in wheat, corn, oats, barley and rye during the first 6 months of 1946, was as follows:

1. Regulation 1889. - adopted March 4, 1946, fixed the following maximum prices for trading in futures, which maximums were in accord with increases announced by the Secretary of Agriculture and the Office of Price Administration:

Grain	New Ceiling			Previous Ceiling	
	Effective Date	Price	Increase	Price	Effective Date
Wheat	3/4/46 1/	$1.54¢	.03	$1.50¢	6/2/45 3/
Corn	3/4/46 1/	1.21¢	.03	1.18¢	2/26/45 4/
Oats	3/4/46 1/	.83	.02	.81	2/26/45 5/
Barley	2/4/46 1/	1.26¢	.03	1.23¢	2/26/45 6/
Rye	6/1/46 2/	$1.44¢	.04	$1.44¢ 2/	7/26/45 7/

1/Regulation 1889, Adopted Mar. 4, 1946.
2/Applied only to July, 1946 - and later rye futures.
3/Regulation 1864-D, Adopted June 1, 1945.
4/Regulation 1877-A, Adopted Feb. 20, 1945.
5/Regulation 1875-A, Adopted Feb. 20, 1945.
6/Regulation 1876-A, Adopted Feb. 20, 1945.
7/Regulation 1882, Adopted July 26, 1945, applied only to July 1946, and later rye futures

2. Regulation 1893. - adopted March 26, 1946, declared an emergency to exist because of interference by War Food Order 144 1/ with normal procedure in the marketing of wheat and, therefore, stopped all further trading in futures contracts for delivery of wheat in May, 1946, and, ordered all May, 1946, wheat futures settled as of March 26, -at the ceiling price then prevailing, namely; $1.83 1/2 per bushel.

3. Regulation 1894. - On May 12, 1946, following announcement on May 8, by the Office of Economic Stabilization, the U. S. Department of Agriculture, and the Office of Price Administration that, effective May 13, 1946, grain price ceilings would be increased by specified amounts, and on recommendation of the three Government

1/War Food Order No. 144, issued Feb. 15, 1946, and effective Feb. 18, 1946, required, among other things, that all merchandisers and country shippers offer to the Commodity Credit Corp. at the end of each week any wheat in excess of the quantity needed to make deliveries (1) on export licenses Approved by the Office of International Trade, U. S. Department of Commerce, and (2) on orders from millers or feed manufacturers who furnished certificates indicating that the purchases would not increase the respective processors' inventories of wheat on hand to more than 45 days supply, as permitted under War Food Order No. 144. Any wheat so offered by a merchandiser, if not accepted by the Commodity Credit Corp. within two days, was to be held as excess wheat applicable on preferred orders, and could not be applied on any other order or contract.

agencies named above that all futures contracts open at the close of business on May 11 be settled at the then applicable ceiling prices, and that all cash contracts be handled in a similar manner, the Chicago Board of Trade adopted Regulation 1894. This regulation, after stating that the Board of Trade found itself without authority to make any adjustments respecting cash contracts, declared an emergency to exist respecting futures trading and stopped all trading except for liquidation in all "old" futures outstanding (except rye for delivery in May 1946) as of May 11, 1946, such trading for liquidation to be at or below the old ceiling prices prevailing on Saturday, May 11, 1946. In addition, the Board authorized trading on "new" futures contracts beginning on May 13, 1946, for months and at prices indicated below. The old ceiling prices at which old futures were ordered closed out, and the new ceiling prices at which trading in new contracts was established were as follows:

Grain	Old Ceiling	New Ceiling	New Contract Months Authorized For Trading
Wheat	$1.83¼	$1.99¼	Aug. and Nov. 1946, and March 1947
Corn	1.21¼	1.46¼	Jan. 1947, and March 1947
Oats	.83	.88	Aug. and Nov. 1946, and March 1947
Barley	1.26¼	1.35¼	Nov. 1946, and March 1947
Rye	$1.44¼	$1.58¼	Nov. 1946, and March 1947

This action protected short interests against the increases in ceilings effective May 13, and correspondingly injured the interests of longs. Cargill, Inc., immediately filed suit against the Board of Trade and its officers and directors alleging that the regulation requiring trading and final settlement of old contracts at the old ceilings constituted a violation of the Sherman Antitrust Act, and suing for triple damages on its long position which the complaint stated represented hedges against forward sales of grain which Cargill was obligated to buy at the new ceiling prices without the price protection its hedges otherwise would have afforded.

Trading in the old futures for liquidation only continued in a desultory way to the end of May. There was some reduction of open trades, but shorts, and especially short speculators, were largely frozen in their open positions. On May 29, contracts representing substantial quantities of corn, oats, and barley deliverable in May were in default because of refusal, on the one hand, of longs to sell, and, on the other, of shorts to deliver corn, oats and barley then having higher cash values than the old ceiling settlement prices fixed by Regulation 1894. Also, a considerable quantity of May rye contracts, on which there was no ceiling price, remained unsettled. This situation was met by significant actions of the Board of Trade numbered 4, 5 and 6 below.

4. Regulation 1895, - adopted May 31, 1946, fixed the price for settlement of defaulted May rye futures contracts at $2.70 per bushel. This was the settlement price for defaults on the last rye contract traded in before the ceiling price of $1.58 1/2 became effective for all other rye contracts dealt in after June 1, 1946. It represents the level to which unrestrained speculation had forced the price of rye which, like wheat, was in short supply.

5. Regulation 1897, - adopted May 31, 1946, reversed the Board's action requiring trading in and settlement of May contracts for corn, oats and barley at the old ceilings and provided for the settlement of defaulted May contracts in these grains at the new ceiling prices effective on and after May 13, 1946, of $1.46 1/2 per bushel for corn; 88 cents for oats, and $1.35 1/2 for barley. This reversal of Regulation 1894 was equivalent to assessing a penalty on defaulting shorts amounting to 25 cents per bushel for corn, 5 cents per bushel for oats and 9 cents per bushel on barley. It merely disposed of the defaulted May, 1946, futures in these grains by shifting the loss on defaults from the longs to the shorts.

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8. Regulation 1898, - also adopted May 31, 1946, stated that, whereas the three Government agencies that had issued the recommendation of May 8, in accordance with which Regulation 1894 had been adopted, and that whereas these agencies subsequently had found that they could not issue a positive directive backing up that recommendation, the Board of Directors, deemed itself justified in reconsidering its action embodied in Regulation 1894. Accordingly, that part of Regulation 1894 which restricted trading in old futures contracts to trading for liquidation at prices no higher than ceilings prevailing prior to May 13, was rescinded. Regulation 1898 provided further that trading in all old futures outstanding as of June 1, 1946, might be continued on and after June 3, 1946, at prices no higher than the ceilings which became effective May 13, 1946. The effect of Regulation 1898 was to continue trading in the so-called "new" futures, and to reopen trading in the "old" futures for purposes other than liquidation, all futures to be traded under the new ceilings effective May 13, 1946. The list of futures open for trading on and after June 3, 1946, was as follows:

Grain	May 13 Ceiling	Futures Contracts Open For Trading June 3, 1946
Wheat	$1.90¾	Old: July, Sept. and Dec. 1946, and May 1947 New: Aug. and Nov. 1946, and March 1947
Corn	1.48¾	Old: July and Sept. 1946 New: Jan. and March 1947
Oats	.88	Old: July, Sept., and Dec. 1946 New: Aug. and Nov. 1946, and March 1947
Barley	1.38¾	Old: July, Sept. and Dec. 1946 New: Nov. 1946, and March 1947
Rye	$1.50¾	Old: July, Sept. and Dec. 1946 New: Nov. 1946, and March 1947

Following this action, trading was resumed and the prices of all old futures promptly moved upward by the daily price limits of 5 cents per day until all futures except oats were firmly established at the new ceilings. There actually were very few trades, in any of the futures, either old or new, except oats, which was the only grain in plentiful supply. Practically all of the small volume of trading was for liquidation. The result was that as of June 12, there was little change in open interests outstanding as compared with June 3, and open positions were frozen with little possibility up to June 12 for anyone to adjust his position.

7. Regulation 1899, - adopted June 13, 1946, declared that an emergency existed for reasons stated in the regulation sufficient to "render impossible the continuance on this Exchange of a free, open and orderly market where normal competitive elements may and can operate * * * *," stopped all trading, and ordered liquidation at the closing prices prevailing on the Exchange on June 13, for the following futures:

Wheat in July, August, September, November and December 1946, and in March and May, 1947 (Representing all outstanding wheat futures).

Corn in July, September and December 1946 (Representing all old corn futures).

Barley in July and September, 1946 (Representing all old barley futures except December, 1946),

Rye in July, September, November and December, 1946 and in March 1947 (Representing all outstanding rye futures).

This action left as the only futures to be traded on the Chicago Board of Trade the following as of June 14, 1946:

Corn in January and March, 1947 (1946 crop futures).

Oats in July, August, September, November and December, 1946 and March, 1947.

Barley in November and December, 1946 and March, 1947.

8. Regulation 1901. - The final action affecting trading in grain futures adopted by the Chicago Board of Trade during the first six months of 1946, was taken on June 30. This action, in the form of Regulation 1901, merely removed all price ceiling restrictions in view of the expiration of the Emergency Price Control Act (Congress not yet having acted) at midnight June 30 and continued the 5-cent daily price variation limit, and price differentials for grades and types of grain in effect on June 29, 1946.

SECTION 2. FACTORS UNDERLYING ACTIONS TAKEN

Chicago Board of Trade Organization

The Board of Trade of the city of Chicago is a commodity exchange set up as a corporation by special legislative acts of the State of Illinois in 1859. This act, as amended December 26, 1945, declares:

"Section 1. That the persons now composing the Board of Trade of the city of Chicago are hereby created a body politic and corporate, under the name and style of 'The Board of Trade of the city of Chicago,' and by that name may sue and be sued, implead and be impleaded, purchase, take, receive, acquire, own, hold, use, lease, sell, mortgage, pledge and otherwise deal in and with such real or personal property, including shares or other interests in or obligations of domestic or foreign corporations, associations, partnerships or individuals, of whatever nature or kind, and of whatever amount or value may be necessary or suitable or proper to serve and accomplish the purposes of its organization; have a common seal, and alter the same from time to time; and make such Rules, Regulations and By-Laws from time to time as they may think proper or necessary for the government of the corporation hereby created, not contrary to the laws of the land."

* * * * *

"Section 13. Said corporation shall have no power or authority to do or carry on any business excepting such as is usual in the management of boards of trade or chambers of commerce, or as provided in foregoing sections of this bill." 2/

The Board's charter powers, within the general restriction of section 13, are broad. It may make such rules, regulations and by-laws, not contrary to the laws of the land, as it may deem necessary for its conduct as a board of trade; it has the sole right to determine the qualifications of and to admit and expel members; 2/ it may create boards of arbitration and appeals for the settlement of disputes among members, again in accordance with rules, regulations and by-laws adopted by the Board.3/ Also, upon written submission for arbitration, its arbitration committee awards, if not appealed within a time fixed by the Board's rules, regulations and by-laws, may be filed with the Clerk of the Circuit Court, whereupon, by law as set out in the special legislative act incorporating the board of trade, the award may serve as the basis for issuance of an execution as if it were a judgment rendered in the Circuit Court.4/ The Board also has power to appoint persons to examine, weigh, gauge and grade commodities and to issue certificates which shall be

1/Act to Incorporate, Section 6.
2/Ibid., Sec. 6.
3/Ibid., Sec. 8.

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evidence between, and shall be binding upon, buyers and sellers dealing on the Exchange as to the quality, grade, and quantity of commodities dealt in on the exchange.5/ This last function, once exclusive to the Board, is now shared with and supplemented by both State and Federal inspection and grading.

Declared Objects of the Board

The declared objects of the Chicago Board of Trade as set out in the preamble to its rules and regulations in effect June 13, 1946, are:

> "To maintain a Commercial Exchange; to promote uniformity in the customs and usages of merchants; to inculcate principles of justice and equity in trade; to facilitate the speedy adjustment of business disputes; to acquire and disseminate valuable commercial economic information; and, generally, to secure to its members the benefits of cooperation in the furtherance of their legitimate pursuits."6/

The rules and regulations adopted to attain these objects cover some 255 printed pages. Board of Trade actions designated as rules comprise what might be called a permanent constitution which can be added to or amended only by vote of the full membership of the Chicago Board of Trade.7/ Chapters of the rules cover: Government of the Exchange; Membership; Offenses and Punishment; Arbitration and Appeal; Agency and Margin Accounts; Brokerage and Commissions, Emergencies, Hours of Trading and Contracts; Deposits for Security; Deliveries of Commodities; Clearing House; Cash Grain, Provisions; Cotton, and other miscellaneous subjects. These rules constitute about 90 printed pages. They can be changed only by vote of the full membership. The regulations, corresponding to legislative acts adopted in accordance with and in interpretation of the basic rules, may be adopted by the Board of Directors of the Exchange and do not require submission to vote of the full membership. They, however, have the binding effect of rules provided they are not in conflict with existing rules adopted by vote of the full membership.8/ Such regulations of the Board of Trade of Chicago in effect June 13, 1946, constitute approximately 165 printed pages.

Emergency Rule and Regulations

The maintenance of a commercial exchange in which the inculcation and maintenance of principles of justice and equity are maintained as a declared objective requires the continued exercise of broad authority over trading. Emergency conditions beyond the control of the Board of Trade management may impose conditions under which rules for normal trading may not be adequate to maintain, to use the exact words of the Board of Trade's management, "a free, open and orderly market where normal competitive elements can and may operate."9/ To enable the management promptly to meet such situations, the Chicago Board of Trade has a rule under the title "Emergencies," reading as follows:

> "The Board /of Directors/ shall have power to declare any day to be a holiday, or to close the Exchange or to stop trading in any security, or in any of the future contracts of any commodity by reason of any emergency or otherwise, and to make such regulations in regard to deliveries and settlement prices as it may deem proper because thereof. All Exchange contracts shall be subject to the exercise of such power. Such contracts shall also be subject

5/Ibid., Sec. 10.
6/Rules 57 and 58.
7/Rules 57 and 58.
8/Rules 72 and 337.
9/See Regulation 1000

to the exercise by the Clearing House of the powers reserved to the Clearing House by its charter, By-Laws and Resolutions."10/

Justification for the delegation to its management of power to stop trading and order settlements "by reason of any emergency or otherwise" as a means of accomplishing the declared objects of the Chicago Board of Trade, would seem to be the necessity for speedier emergency action than otherwise would be possible to prevent demoralization of the market or irreparable damage to the welfare of the Board of Trade or to some of its members, or to the public. On the other hand, the possibility of its misuse in favor of some, or to the injury of other, trading interests, or of its ill-considered use, even with the best of intentions, similarly resulting in damage to the goodwill and welfare of the Board, also exists. Exercise of its emergency power, therefore, is something to be undertaken by the Exchange's Board of Directors only with extreme care, and with the single purpose of attaining the Board's declared objects of maintaining a commercial exchange in which principles of justice and equity in trade are consistently applied to the end of securing to all of its members, (and, it might well be added, producers and consumers of products traded) the long-run benefits of cooperation in the furtherance of their legitimate pursuits. Deviation from such well-considered use of its great discretionary power, in the long pull, only injures the public support and welfare of the exchange.

Wartime conditions and Government restrictions imposed numerous abnormal operating conditions which were made the basis for the adoption of regulations from the year 1942, onward in which Rule 251 was specifically cited as the basis for action taken stopping trading and ordering settlements of future contracts for commodities traded on the Chicago Exchange.11/ This rule was cited as the authority for each of the significant actions taken during the first 6 months of 1946 respecting futures in grains that have been reviewed in Section 1 above except Regulation 1901 which merely removed ceiling price restrictions from trading in specified future contracts for corn and oats in which trading was permitted on and after July 1, 1946.

Precedents for Fixing Prices on Defaults

Under the theory that every future contract is in fact a contract requiring the delivery of grain if it remains open at the end of the delivery month, the rules regarding fulfillment of contracts are strict. Failure of either the seller to make, or the buyer to take, delivery constitutes default.12/ Defaults are subject to arbitration, and if the claim is admitted or established by an arbitration award, the rules require that the defaulting member shall be suspended until he has satisfied all debts owing under contracts to members of the exchange as established by the arbitration.13/ Another rule classes the making of default an "inequitable proceeding" for which the member may be suspended or expelled unless the Board determines that the default was unintentional.14/ In cases of failure of members to give notice of intention to deliver grain at the termination of particular contracts, it is customary for the Board of Directors, acting under Rule 251, to declare such failure to constitute default and to fix the price at which defaulted contracts will be settled. If the Board of Directors so determines, the settlement price may include a cash penalty against defaulters. Also, if in the opinion of the Board of Directors the

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10/Rule 251. This rule first appears in the Board's Annual Report for 1930.

11/For instance, Regulation 1868, adopted Nov. 24, 1945, cited Rule 251, and suspended trading in cottonseed oil for the reason that the Office of Price Administration placed two maximum prices on contract grade oil depending on its use, Regulation 1847, adopted Dec. 6, 1945, citing Rule 251, ordered settlement of open December lard contracts not fulfilled by delivery of lard on or before Dec. 30, 1945, to be settled at the O. P. A. ceiling price of 13.5 cents per pound, and Regulation 1882, adopted Feb. 26, 1946, stopped all new trading in soy bean contracts and ordered liquidation of all May, July and Oct., 1945, contracts outstanding on Feb. 19, 1946, at specified prices.

12/Rules 138 and 141.

13/Rule 139.

14/Rule 141.

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default is involuntary, or due to conditions beyond the control of the defaulter, the penalties of suspension or expulsion provided by Rule 141 may be suspended.

Wartime actions prior to 1946, in which the Board fixed ceiling prices as the settlement prices for defaulted futures at the termination of contracts, and suspended the penalties of Rule 141, are to be noted in the settlement of defaulted May and July 1945, corn,15/ and December 1945, wheat, corn and barley contracts.16/

In addition, when supply conditions became tight in the middle of 1945, the Board resorted to the emergency rule on July 31, 1945, when it declared that an emergency existed because it appeared that a sufficient supply of corn could not be accumulated in Chicago to enable settlement of outstanding September 1945, futures, closed trading on September corn altogether, and ordered that all September corn futures outstanding on August 1, 1945, be settled forthwith at the prevailing ceiling price of 1.18 1/2 cents per bushel.17/

Somewhat less drastic action had previously been taken respecting the July corn contract when, for similar reasons, the Board, on July 17, 1945, limited new commitments in the maturing July 1945, corn future to short sales for delivery purposes only by those having contract grades in deliverable position, and limited all other trading in July corn to trades for liquidation purposes only.18/ Similar action was taken on December 8, 1945, with respect to trading in December 1945, contracts for wheat, corn and barley.19/ Each of these last two actions preceded actual defaults which were the occasions for the Board ordering settlements at prevailing ceiling prices.

Further Tightening of Conditions Early in 1946

These various instances in 1945, constitute precedents for actions taken during the first half of 1946, when shortages of supply of all principal grains except oats became more severe than in 1945. In 1946, however, not only were supplies short, but other important factors accentuated the difficulty of maintaining the integrity especially of wheat and corn futures.

Wheat

There was a bumper crop of 1,123,143,000 bushels in 1945. Heavy industrial and feed use of wheat, however, had cut carry-overs from 632,000,000 bushels in 1942 to 281,790,000 bushels as of July 1, 1945. Use for feed, including both use on farms and by commercial feed manufacturers, and domestic demand for human food processing continued to be large and demand for export increased. Primary receipts, while larger during the latter part of 1945, than in 1944, were insufficient to prevent inroads on stocks in terminal elevators with the result that the visible supply in terminal elevators at the beginning of January, 1946 was 87,435,000 bushels as compared with 128,917,000 bushels a year before. Government requirements for relief caused shipments to increase while farmers, not pressed for cash, were inclined to hold wheat off the market for possible increase in price.

With the situation growing steadily tighter, War Food Order No. 144, effective February 18, 1946, required among other things that grain merchandisers and country shippers offer to the Commodity Credit Corp. each week any stock of wheat on hand in excess of the quantity necessary to make deliveries on approved sales

15 Regulation 1879 (May corn) and 1884 (September corn)
16 Regulation 1887
17 Regulation 1884
18 Regulation 1881
19 Regulation 1899

for export and orders from millers and feed manufacturers accompanied by certificates showing that the purchase would not increase the latters' inventory beyond a 45-day inventory of wheat. This made it impossible for merchandisers to accumulate stores of wheat in position for delivery on futures. By the first of May the visible supply in store in warehouses at prominent grain centers east of the Rocky Mountains and afloat on the Great Lakes had fallen to 15,239,000 bushels, representing less than 25 percent of the visible supply at that date of 1945, and less than 15 percent of that in sight at the corresponding time in 1944.

The total stocks of wheat in Chicago, including wheat of all grades, in all elevators both public and private, became very tight as shown below.

TABLE 1. TOTAL STOCKS OF WHEAT IN CHICAGO AT THE BEGINNING OF EACH MONTH FOR THE FIRST 6 MONTHS OF 1946, 1945 AND 1944
(Source Chicago Board of Trade Statistics)

Month	(In Thousands of Bushels)			Percentages 1946 to	
	1946	1945	1944	1945	1944
January	1,423	6,607	9,186	20.9	15.5
February	972	5,656	8,162	17.1	11.9
March	588	4,386	7,695	13.4	7.6
April	636	2,662	8,877	23.8	7.2
May	281	1,122	10,109	25.0	2.8
June	176	1,574	10,319	11.2	1.7
July	433	1,704	9,525	25.4	4.5

Thus the showing for the overall storage supply in Chicago became progressively worse from January to June 1946, and was only slightly eased before the beginning of July.

But this showing does not fully measure the shortage of supply in deliverable position or capable of being placed in deliverable position, in Chicago. This is more correctly reflected by Table 2 which shows the quantities of wheat of deliverable grades in Federal licensed warehouses in Chicago, which constitute the bulk of regular storage from which deliveries on futures can be made in Chicago. The total quantity in such warehouse space is subdivided as between deliverable grades, nondeliverable grades, and ungraded, and comparison is made for each subdivision between the quantity in store near the beginning of each month from January to June 1946, and the corresponding dates of 1945.

TABLE 2. TOTAL QUANTITY OF WHEAT IN STORE IN FEDERAL LICENSED WAREHOUSES IN CHICAGO SUBDIVIDED AS TO DELIVERABLE GRADES, NONDELIVERABLE GRADES, AND UNGRADED, ON SPECIFIED DATES OF FIRST 6 MONTHS 1946 AND 1945

Date	Deliverable Grades			Nondeliverable Grades		
	1946 (Bushels)	1945 (Bushels)	Percent 1946 to 1945	1946 (Bushels)	1945 (Bushels)	Percent 1946 to 1945
January 5	88,325	428,339	20.6	344,289	1,706,644	20.2
February 2	105,289	347,887	30.3	227,194	1,309,134	17.4
March 2	65,717	259,356	25.3	190,986	1,024,429	18.6
March 30	140,241	110,463	127.0	266,603	996,998	26.7
April 27	30,290	64,453	47.0	184,236	414,862	44.4
June 1	12,963	448,055	2.9	18,790	347,847	5.4
June 15	14,987	741,955	2.0	22,636	338,109	6.7
June 29	5,788	636,624	0.7	263,630	376,165	70.1
	Ungraded			Total in Federal Warehouses		
January 5	500,769	386,383	129.6	933,383	2,519,346	37.0
February 2	400,389	419,376	95.5	732,872	2,076,397	35.3
March 2	236,798	370,727	63.9	492,501	1,654,512	29.8
March 30	208,519	218,421	94.6	613,363	1,325,880	46.3
April 27	105,473	372,469	28.3	319,999	851,784	37.6
June 1	137,247	232,156	59.1	169,000	1,028,058	16.4
June 15	141,081	146,312	96.4	178,674	1,227,376	14.6
June 29	143,292	69,052	160.9	412,708	1,302,041	31.7

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Here again, the showing is that, for all dates used, the total quantity of all grades in store in Federally licensed warehouses in Chicago during the first 6 months of 1946, was continuously less than half that in store on corresponding dates one year before; and also that the quantities of deliverable grades in 1946, represented even smaller fractions of the quantities in such position one year before except near the end of March and May. But even this showing does not fully reflect the difficulty of accumulating wheat in deliverable position to make good on futures for the reason that much of the wheat of all grades in store, in effect, belonged to Commodity Credit Corporation or others who were in preferred position as to ownership of grain. Thus the combination of circumstances set up by War Food Order No. 144 and the payment by the Government of a premium appears to have made it practically impossible to accumulate and control wheat of deliverable grades necessary to maintain the validity of 1946 futures contracts prior to the advance in ceiling price effective May 13, 1946.

Even after that date, and up to July 1, 1946, much the same situation prevailed due to the fact that farmers, being generally prosperous and anticipating higher wheat prices if O.P.A. controls were removed on July 1, held what wheat they had. The result was that, as of June 15, at approximately the date on which all outstanding wheat futures traded on the Chicago Board of Trade were closed out at the then prevailing ceiling price (likewise in anticipation of the lapsing of O.P.A. controls on July 1), the total quantity of wheat in Federally licensed warehouses in Chicago (178,624 bu.) was less than 15 percent of the quantity (1,226,376 bu.) in store on the corresponding date of 1945. It appears that at this time the bulk of all wheat in Chicago was in Federally licensed warehouses. Under these circumstances, it is even more significant to note that, as of June 15, 1946, the total quantity of wheat of deliverable grades in Chicago's Federally licensed warehouses (14,957 bu.) was only 2 percent of the total in such position one year before. Two weeks later, on June 29, the total in store in Chicago warehouses had improved somewhat, but with no wheat futures outstanding and, therefore, no reason to attempt to maintain stocks of deliverable grades in deliverable position, the total of such grades in Chicago had shrunk to less than 6,000 bushels.

Corn

The broad supply situation respecting corn in 1946, as compared with 1945, was that during the tight situation from February to the end of June, the total visible supply exceeded the quantity in sight one year before. The quality, however was poor, due to early frosts over much of the corn belt resulting in large quantities of "soft" corn of high moisture content that required drying (to make it storable) and mixing to produce the maximum quantity of other than sample grade. The result was that in Chicago, while the total quantity in store in Federally licensed warehouses greatly exceeded that of one year before, the bulk of that quantity was of nondeliverable grades up to May 1. The Chicago situation, as of specified dates, is summarized in the following table.

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TABLE 3. TOTAL QUANTITY OF CORN IN STORE IN FEDERAL LICENSED WAREHOUSES IN CHICAGO SUBDIVIDED AS TO DELIVERABLE AND NONDELIVERABLE GRADES, ON SPECIFIED DATES DURING THE FIRST 6 MONTHS, 1946 AND 1945

Date	Deliverable Grades			Nondeliverable Grades			Total in Federal Warehouses		
	1946	1945	Percent 1946 to 1945	1946	1945	Percent 1946 to 1945	1946	1945	Percent 1946 to 1945
January 5	109,089	367,633	30.5	1,222,557	1,170,586	104.4	1,331,626	1,538,219	87.1
February 2	78,234	1,104,953	7.1	2,783,765	2,028,423	137.2	2,861,999	3,133,376	91.3
March 2	295,769	1,569,083	18.9	5,577,314	2,657,198	209.9	5,873,083	4,226,231	139.0
March 30	757,011	1,904,490	39.7	5 334,581	1,527,399	349.3	6,091,592	3,431,889	177.5
April 27	1,383,244	685,301	201.8	4,070,112	990,544	410.9	5,453,356	1,675,845	325.4
May 4	2,028,642	577,143	351.5	3,568,437	995,018	358.4	5,595,079	1,572,161	355.9
May 11	3,392,003	670,227	506.1	3,391,495	1,162,368	291.8	6,783,498	1,832,595	370.2
June 1	5,176,498	262,212	1974.2	1,740,344	898,019	193.8	6,916,839	1,160,231	596.2
June 15	3,659,358	198,621	1841.1	1,417,261	605,915	233.9	5,076,619	802,536	632.6
June 29	2,772,365	309,739	895.1	806,215	489,286	164.8	3,577,578	799,005	447.8

It will be recalled that coincident with dwindling supplies of corn of deliverable grades in Chicago in 1945, there were defaults on the July 1945, and December 1945, corn futures,20/ and that the September 1945, contract was closed out by order of the Board of Trade as of August 1, 1946, on the grounds of "serious doubts that sufficient corn can be accumulated in Chicago by the end of September to provide supplies adequate for delivery on September 1946, corn future contracts."21/ By April 1946, however, the quantity of corn of deliverable grades in Chicago had risen in preparation for settlement of the May future from the low of 78,234 bushels on February 2, to 2,028,642 bushels on May 4, a quantity over 3 1/2 times that in Chicago one year before. On May 11, the date on which all old contracts were ordered closed out at the old ceiling, 5 times as much corn of deliverable grades was in Chicago as was in store one year before; on June 1 there was nearly 20 times as much and on June 15, just after all July and September 1946 contracts were closed out at the then prevailing ceiling, the quantity of deliverable grades was 18.6 times that in Chicago one year before.

From this showing it would appear that the corn situation was much easier in Chicago throughout the critical period from May 1 to July 1 than it was the year before. This, however, is not the whole story for much of the corn in store was either the property of the Government, or of others with preferred positions as to ownership of inventories, or was earmarked for shipment on preferred orders.

A possibly somewhat extreme instance of how much of the corn in Chicago may have been so tied up is to be noted in the position of an important merchandiser-operator of a Federally licensed warehouse. This house had more than 750,000 bushels of corn in store on June 15, 1946, of which Commodity Credit owned 76.2 percent, others, stated to be mainly eastern buyers, owned 23.3 percent, and the elevator operator owned only .5 percent. How much of the corn in this, as well as in other houses, might have been available for satisfaction of Chicago futures, especially in July and September was most uncertain with the probability that there would be little. At this time the 1946 crop had only recently been planted. Corn owners generally were holding their supplies for the price increase over then existing ceilings that they expected and hoped would occur if price regulation lapsed on July 1. In view of this uncertain situation all old futures in corn were closed out leaving only new (1946) crop futures for January and March 1947, delivery to be traded in on the Chicago Board of Trade.

20/Chicago Board of Trade Regulation 1202 (adopted July 31, 1945,) and Regulation 1207 (adopted January 3, 1946).

21/1946, Regulation 1304 (adopted July 31, 1946).

[fol. 597]

Barley and Rye

The supply of barley and rye likewise was short. Old contracts in barley were accordingly all closed out at existing ceilings, leaving only new crop futures for delivery in November and December 1946, and March 1947, to be traded on the Chicago Exchange. Rye futures, also, were all closed out in view of the fact that acute short supply due to subnormal acreage and production had produced high speculative prices which were sharply reduced by the imposition of the ceiling of $1.58 1/2 effective June 1, 1946. It was certain that there would be a sharp increase in price if the ceiling went off on July 1.

Oats

The oats supply situation in Chicago, though it grew increasingly tighter from January 1 to June 30, 1946, never assumed such critical aspects as wheat or corn, partly for the reason that Government purchasing and requirements that supplies be offered or held for Government disposition were not factors. The visible supply of domestic oats in store in primary markets east of the Rocky Mountains fell from the large quantity of 41,824,000 bushels at the beginning of January 1946, to 2,703,000 bushels at the beginning of July.22/ At this point the visible supply was about one-third that of the corresponding date of 1945, and about half that of 1944. The storage situation in Chicago's Federally licensed elevators likewise tightened sharply during the first 6 months of 1946, as shown in Table 4.

TABLE 4. TOTAL QUANTITY OF OATS IN STORE IN FEDERAL LICENSED WAREHOUSES IN CHICAGO SUBDIVIDED AS TO DELIVERABLE AND NONDELIVERABLE GRADES ON SPECIFIED DATES DURING THE FIRST 6 MONTHS OF 1946 AND 1945.

Date	Deliverable Grades			Nondeliverable Grades			Total in Federal warehouses		
	1946	1945	Percent 1946 to 1945	1946	1945	Percent 1946 to 1945	1946	1945	Percent 1946 to 1945
January 5	2,709,497	515,357	525.8	1,099,948	605,949	181.5	3,809,445	1,121,306	339.7
February 2	2,239,930	444,844	503.5	1,035,917	580,909	178.3	3,275,847	1,025,753	319.4
March 2	1,330,354	319,919	415.8	686,183	452,984	151.5	2,016,457	772,903	260.9
March 30	1,515,766	480,274	329.3	584,076	300,787	194.2	2,099,842	781,061	268.9
April 27	1,328,215	2,221,369	59.8	894,990	124,475	478.0	1,923,205	2,345,844	82.0
May 11	799,378	2,183,847	36.6	127,928	191,472	66.8	927,306	2,375,319	39.0
June 1	253,068	2,875,744	8.8	122,121	212,404	57.5	375,189	3,088,144	12.1
June 15	210,614	2,068,197	10.2	75,520	179,341	42.1	286,134	2,247,538	12.7
June 29	87,070	2,415,821	3.6	77,676	297,478	26.1	164,746	2,713,299	6.1

At the beginning of 1946, the total quantity of oats of all grades in Federal warehouses in Chicago was nearly 3.4 times that in store at the beginning of 1945, and the quantity of deliverable grades was more than 5 times that in store one year before. The quantity of deliverable grades in store dwindled from the high of 2,709,497 bushels on January 5, to 1,328,215 bushels on April 27, and 799,378 bushels on May 11. The May oats future was ordered closed out at the old ceiling on May 13. Thereafter the quantity of deliverable grades in Chicago's Federally licensed warehouses dwindled to 210,614 and the total of all grades to 286,134 bushels on June 15. In the meantime, defaults on May oats futures were closed out at the new ceiling price effective May 13. Trading in all old as well as new month oats futures was continued after June 3. Distant month oats futures showed a tendency to sag away from ceiling and on June 11, all except July were a full cent below ceiling.23/ When old contracts in other grains were all closed out by the Chicago Board of Trade on June 13, no action was taken respecting oats.

22/Board of Trade Statistics as published in trade magazine.
23/Chicago Journal of Commerce, June 12, 1946.

[fol. 598]

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Futures Open to Trading in Chicago After June 13, 1946

The action taken by the Chicago Board closing out all wheat and rye contracts and July and September corn and barley contracts left only January and March 1947, corn futures, July, August, September, November and December 1946, and March 1947 oats, and November and December 1946, and March 1947, barley futures to be traded in on the Chicago Board of Trade after June 13, 1946, and until such time as the Board might authorize resumption of trading in other grain futures. It is not necessary to trade subsequent actions opening trading in other futures for purposes of this report.

[fol. 599]

CHAPTER II. ECONOMIC EFFECTS OF ACTIONS TAKEN

SECTION 1. THE MARKET BACKGROUND

War Food Order No. 144

As already noted, War Food Order No. 144, adopted as a measure necessary to enable the Government to meet its commitments, not only required all grain merchants and country shippers, on and after Saturday, March 2, 1946, to offer to Commodity Credit Corp., at the end of each week, all wheat owned in excess of that required to fill approved preference orders, but it also cut across existing contracts by requiring that:

> "The restrictions of this order shall be observed without regard to existing contracts or any rights accrued thereunder."24/

Thus the effect of War Food Order No. 144 was twofold. It not only made it impossible for grain merchants to accumulate and hold wheat in terminal market warehouses "regular" for future delivery, but also made it impossible to accumulate wheat in country elevators preparatory to moving it to Chicago, or any other contract market, preparatory to delivery on futures. It likewise made it equally impossible for merchandisers to accumulate and hold supplies of wheat for forward delivery on cash contracts other than those having approved preference. Second, the order, in effect, set aside all private contracts not having approved preference status as defined in the order.

Marketwise, the effect of the Government taking over control of the dwindling supply of wheat was to create a situation in commodity exchange markets somewhat similar to a nation-wide corner or squeeze except that the Government rather than a private manipulative trading interest controlled the supply of cash wheat and made it unavailable for satisfaction of future contracts. The interference with normal procedures both with respect to cash and futures was very real, while the fact that the order set aside contract rights respecting wheat turned over to Government control at least strongly suggested that similar procedure be followed by the Board of Trade with respect to futures. The Chicago Board of Trade, citing the interference of W.F.O. No. 144, accordingly ordered all open May contracts settled forthwith at the then existing ceiling 25/ against which the price of the future had been frozen for months.

Other Conditions

Another unusual and important fact that was undoubtedly well recognized by exchange managements long before March 1946, was that whenever futures prices went up to Government-imposed ceilings, the only thing to be speculated on became a possible decrease in price. Consequently, professional speculation in futures (without which, incidentally, futures markets cannot offer adequate hedging protection) had become predominantly speculation on the short side of the market (i. e.) speculative sales in the hope that prices would sag away from ceilings, thereby affording opportunity to cover short positions at a profit.26/

24/ W F O No. 144, par. p.

25/ Chicago Board of Trade Regulation 1803, adopted March 30, 1946.

26/ The U. S. Department of Agriculture, Commodity Exchange Authority, in a study entitled "Effect on Futures Trading in Grains of Changes in Price Ceilings of May 13, 1943," released August 12, 1946, states: "It was found that, contrary to the usual situation, speculators in wheat and corn futures as a group were net short while hedgers as a group were net long. Particularly unusual was the fact that small speculators were predominantly short

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Equally abnormal was the fact that with grain at ceilings and in short supply, hedging became predominantly on the long side of the market in the form of purchases of futures against forward sales of cash grain not yet bought by the hedger. With little grain in store and cash and futures pressing strongly against ceilings, as evidenced by the giving of something in barter in order to get grain, there was little incentive to hedge even small stocks owned by the sale of futures (hedging on the short side of the market). Under these circumstances the long side of the market consisted of long hedgers and some speculators willing to take delivery of grain if they could get it on futures, while the short side became very largely speculative.

Since the shortage of supply made purchase of cash grain difficult, even though something of value other than the cash purchase price was given (such as finding a carload of coal or a specified number of pairs of nylon stockings for the country shipper), neither hedgers nor speculators in long positions were willing to sell their futures, preferring to hold them in the expectation that somehow their validity as a source of grain might be preserved or, failing that, that cash settlement, at least at the prevailing ceiling price, would be forthcoming in case of default in the terminal month. This situation automatically resulted in freezing short speculators in their open positions.

All this occurred before March 1946. In fact, except that the supply situation was more aggravated with respect to wheat in March 1946, it did not differ greatly from the situation which resulted in defaults in July 1945 corn and in December 1945 wheat, corn and barley contracts.27/ Furthermore, the closing out of the September 1945, corn future for reasons of short visible supply on August 1, 1945, nearly two months before defaults could occur 28/ furnished a perfect precedent for the action taken by the Chicago Board in prematurely closing out 1946 contracts.

Closing out earlier defaulted wheat, corn and barley futures at prevailing ceilings and, at the same time, suspending penalties for defaults,29/ undoubtedly had the effect of creating in the minds of short speculators, including both members and nonmembers of the Chicago Board of Trade, a feeling that they might safely sell futures at ceilings and default without danger of penalty. Commission merchants would benefit from any increased volume of trading resulting, and Clearing House members would be freed of responsibility for collecting penalties from their clients in case of default. All this undoubtedly accentuated the swing of speculative trading to the short side of the market.

Between March 26 and May 1, 1946, the supply situation became increasingly tight. The "black market" in corn, which it was claimed as early as January 1946, made supplies short in regular channels of trade, still continued. In addition, the Commodity Credit Corporation began paying premiums of 30 cents per bushel for corn on April 22 and for wheat on May 3, 1946.30/ Board of Trade of Chicago representatives visited Washington, arguing that, in effect, the Government was conducting a "black market" in these grains and urged, especially, that the ceiling price of corn be advanced 30 cents to kill off the black market in corn in the country. This general situation added to conditions imposed by Food Distribution Order No. 144 made it impossible for anyone except preferred processors, exporters, and the Government to accumulate and hold in store any appreciable amount of either wheat or corn.

27/ See Chicago Board of Trade Regulations 1883 and 1887.
28/ Ibid, Regulation 1884.
29/ Ibid, Regulations 1883 and 1887, both of which suspended penalties.
30/ 11 Fed. Register No. 86, p. 4775 and No. 89, p. 4997.

[fol. 601]

Three-agency Announcement of Policy May 8, 1946

In a joint bulletin dated May 8, 1946, announcing advances in ceiling prices of grains effective May 13, 1946, the Office of Economic Stabilization, the U. S. Department of Argiculture and the Office of Price Administration concluded the announcement as follows:

> "The Government Agencies involved in today's actions request and recommend to the governing boards of the grain exchanges that all futures contracts open at the close of business on May 11 be settled at present appreciable ceiling prices. It is further requested and recommended that all cash contracts be handled on a similar basis." 31/

Following the three-agency announcement of May 8, there was a meeting in Chicago on May 11, 1946, attended by representatives of the Chicago, Minneapolis and Kansas City grain exchanges and a representative of the Office of Price Administration. It appears that at this meeting the exchange representatives were advised to follow the request and recommendation of the three-agency announcement. One Chicago Board of Trade director, who personally did not favor the action taken, but joined in it on the basis that it was what the Government desired, stated that the Government representative practically said the Government would take over grain distribution altogether if the futures were not closed out.

On the following day the directors of the Chicago Board of Trade met, decided they had no legal authority to interfere with cash contracts as recommended, but, citing the Board's Emergency Rule No. 251, stopped trading until further notice in all "old" futures outstanding May 11, except for liquidation at or below the ceilings in effect on that date, and further stated that no consideration would be given to the increase in ceiling prices effective May 13, in considering penalties on defaults arising through failure of sellers to deliver on any old futures outstanding on May 11.

Members of the Board of Directors of the Chicago Board of Trade state that this action was taken under the belief that the Government agencies would back up their request and recommendation by a positive directive setting aside future contract rights similar to that contained in paragraph (p) of War Food Order No. 144.32/ Whether or not these statements are altogether self-serving, the fact that is of importance here is that the request and recommendation laid the basis for protection of professional speculators who are more important in the operations of the Chicago Board of Trade than they are in the lesser exchanges, and who were predominantly in short position where they were practically certain to be frozen by refusal of longs to sell, at least as long as supplies of wheat, corn, rye and barley were critically short and prices remained at ceilings. Oats, which were in more plentiful supply and tended to fall away from their ceiling, actually presented less difficulty, although Regulation 1394 required all old oats contracts to be closed out at the old ceiling. Only May oats contracts, however, were so closed out.

In addition to protecting short speculative interests, Regulation 1894 also freed clearing members of the Chicago Board of Trade from the necessity of dipping into their own funds to cover their responsibility to the Clearing Corporation to cover any undermargined short accounts, either of their own or for customers, in case trading was continued and futures prices moved up to the new ceilings, as there was every reason to believe they would do.

31/ Joint Announcement of Government Grain Price Policy issued by O. E. S., U. S. Dept. of Agriculture and O. P. A. May 8, 1946.

32/ Paragraph (p) of W. F. O. No. 144 states: "The restrictions of this order shall be observed without regard to existing contracts or any rights accrued or payments made thereunder."

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Naturally the financial interest of commission houses as well as speculators on their own account, both within the Board of Trade and outside its membership, would tend to make them favor closing out outstanding "old" contracts at the old ceilings and starting trading anew with "new" contracts. This was done by Regulation 1894 even though such protective action destroyed the validity of contracts as hedges, wiped out the potential profits of long speculators, and, in general, undermined public confidence in the integrity and validity of futures contracts. It is to be kept in mind, however, that in doing this, the Chicago Board of Trade was following the request and recommendation of the three-agency announcement of grain policy of May 8, 1946.

Having taken this action on May 12, the Board of Trade management asked the three Government agencies for a positive directive along the line of the request and recommendation. When such a directive was not forthcoming, the Board of Directors reversed itself with respect to the settlement of defaulted old May futures in wheat, corn, oats, and barley, and ordered resumption of trading in all other "old" contracts under the new ceilings, such trading to begin June 3.

After a period of ten days of trading during which all old futures, even including oats which were in fairly plentiful supply, moved up to the new ceilings, they, together with certain of the so-called "new" futures, were all closed out at ceiling prices prevailing at the close of trading on June 13. This last action was taken in anticipation of price increases which it was believed would follow the expected expiration of price controls on July 1.

The net effect of closing out defaulted May futures and permitting trading in other old futures until they reached new ceilings was to shift the financial responsibility for the May 13 ceiling price increases back to the frozen in shorts, while that of closing out all old futures and some new ones prematurely on June 13 was to relieve shorts of any further responsibility for price increases which might occur after the anticipated expiration of price controls on July 1.

With these general background facts in mind, the ensuing section presents measures of the financial effects produced and the incidence of profits and losses arising out of the various actions of the Chicago Board of Trade in closing out futures contracts from March 26 through June 13, 1946.

SECTION 2. TOTAL VOLUME OF GRAIN FUTURES AFFECTED BY CLOSE-OUT ORDERS

Contracts Involved

As already indicated, the Chicago Board of Trade, by regulations adopted under its Emergency Rule 251, restricted trading in all grain futures at some time during the period from March 26 to June 13, 1946, and closed out altogether the following "old"33/ and "new"34/ futures on or before June 13:

Grain	Old Futures	New Futures 33/
Wheat	May, July, Sept. & Dec. 1946, and May 1947	Aug. & Nov. 1946, and March 1947
Corn	May, July and Sept. 1946	
Oats	May, July, Sept. & Dec. 1946 35/	
Rye	July, Sept. & Dec. 1946	Nov. 1946, & March 1947
Barley.....	May, July and Sept. 1946	

33/Old futures are those traded in under ceilings in effect from March 6 to May 13, 1946.
34/New futures are those authorized for trading under the new ceilings effective May 13, 1946.
35/July, Sept. and Dec. Oats were affected only by the limitation of trading to liquidation during the period May 13 to May 31.

[fol. 603]

May 1946, wheat was closed out by special regulation on March 26.36/ All other May futures except rye were subjected to special regulation limiting trading to liquidation from May 13 to the end of trading and all May futures, including rye, were closed out by special regulation covering quantities defaulted on May 31.37/ For all other old futures for all five grains, trading was limited to liquidation from May 13 to June 3, then open trading was permitted through June 12, and on June 13, all except oats were closed out.38/ And finally, all outstanding new futures for wheat and rye, on which open trading had been permitted from May 13 through June 12, were closed out by special order on June 13.39/

Total Quantity Affected

Table 5 presents the overall picture of total quantities of open old futures affected by the various special regulations of the Chicago Board of Trade. The table also shows the financial effect of various liquidations made, such effects being computed for each grain on the basis of its increase in ceiling price which became effective on May 13. The purpose of the table is twofold: (1) to indicate clearly the total volume of old futures affected by the various regulations, and (2) to indicate the total losses and gains to particular interests due to the fact that part of the futures affected for each grain was settled at the old ceiling price while the remainder, except in the case of oats, was closed out on June 13 at the new ceiling effective after May 13.

36 Regulation 1893
37 Regulations 1894, 1895 and 1897
38 Regulations 1894, 1898 and 1899
39 Regulations 1894 and 1899

TABLE [illegible] TOTAL "OLD" CROP FUTURES CONTRACTS AFFECTED BY MAY 21 INCREASE IN SELLING PRICES AND BY CROP JULY FUTURES ON THE CHICAGO BOARD OF TRADE, MAY [illegible] JUNE [illegible], 1940

	Open May [illegible]	Financial Effect of Selling Increase		Liquidation Trading at Old Selling			May 21 Open Int.		Reduction of Open Trading June [illegible]		Closed Out June [illegible] New Selling Price	
	Bu.	Increase Per Bu.	Amount	Bu.	Loss Long	Bu.	Loss Long at New Selling	Bu.	Bu.	Per Cent Long	Bu.	Per Cent Long
WHEAT - May Contracts												
July, Sept. & Dec. Contracts	[illegible]			[illegible]								
May 21 Contracts	[illegible]			[illegible]								
Total Wheat	[illegible]			[illegible]								
CORN - May Contracts	[illegible]			[illegible]								
July & Sept. Contracts	[illegible]			[illegible]								
Total Corn	[illegible]			[illegible]								
OATS - May Contracts	[illegible]			[illegible]								
July, Sept. & Dec. Contracts	[illegible]			[illegible]								
Total Oats	[illegible]			[illegible]								
RYE - May Contracts												
July, Sept. & Dec. Contracts	[illegible]			[illegible]								
Total Rye	[illegible]			[illegible]								
BARLEY - May Contracts	[illegible]			[illegible]								
July & Sept. Contracts	[illegible]			[illegible]								
Total Barley	[illegible]			[illegible]								
ALL GRAIN - May Contracts	[illegible]			[illegible]								
July & Later Contracts	[illegible]			[illegible]								
Total All Grain May:												
At June 15	[illegible]			[illegible]								
Per Cent May Wheat Open Interest												
At Market Close	[illegible]			[illegible]								
Closed Out Later												
Market Close June [illegible]	[illegible]			[illegible]								

A. May wheat was [illegible] at close of 1940.
Delivery Settled May [illegible], 1940.
No trade closed out June [illegible].
New selling price of rye until June [illegible], 1940, applies on May rye in [illegible].
Total potential loss to longs on selling [illegible] at close of trading May 21 selling price [illegible] reduction made.
Excludes 21,000 Bu. due July and later dates not closed out as of June [illegible].
Excludes 21,000 Bu. due July and later dates not closed out as of June [illegible].
Excludes the small quantity of December Barley not closed out as of June [illegible] amounted to 3,000 Bu. on May 31, 44,000 Bu. on May 31, and 30,000 Bu. on June 15.

[fol. 605]

A total of 93,902,000 bushels of old futures were affected in some way by special regulations of the Chicago Board of Trade from March 26 to June 13, 1946. This total consisted of 9,492,000 bushels (or 10.1 percent) of May wheat, closed out on March 26, 1946; 17,631,000 bushels (18.8 percent) of May contracts for all grains that were closed out during May; 33,291,000 bushels (35.5 percent) of contracts for wheat, corn, rye, and barley that were liquidated prematurely during the period May 13 to June 13; and 33,488,000 bushels (35.6 percent) of later month contracts for oats, trading in which was limited to liquidation only from May 13 through June 3 and thereafter was thrown open without restriction.

Incidence of "Windfall" Profits From Ceiling Price Increases

All of the various futures affected, except oats, were traded continuously at prevailing ceilings throughout the period from March 26 to May 13, and nearby oats futures did not deviate greatly from ceiling at any time during this period. So long as this condition prevailed, short interests in grains other than oats, whether speculative or hedging, were quite effectively frozen in their positions for two reasons: first, by refusal of longs to sell, and second, by the fact that there was no new speculative interest willing to sell and thereby assume a new short position. In other words, except for oats, the market was too one-sided and thin to permit short speculative positions to be liquidated or adjusted. In fact, there is documentary evidence that orders of nonmember short interests to buy given to brokers as early as December 1945, and January 1946, had not been executed in May.

So long as these conditions prevailed with practically no supplies of grain other than oats available for satisfaction of futures, the effect of the ceiling price increases of May 13 would be to place additional financial burdens on shorts, for the benefit of longs, equal to the ceiling price increase for each grain, multiplied by the total open interest in old futures for that grain outstanding when the price increase became effective.

The action taken by the Chicago Board of Trade, on May 12, definitely relieved the shorts of all financial responsibility under the increased ceiling prices to the possible extent of $9,501,330, and shifted that responsibility to the longs in the requirement that all old contracts open May 11 be liquidated at or below the old ceiling. The action of the Board of Trade on May 31, ordering the settlement of defaulted May contracts at the new ceiling, reimposed that responsibility on defaulting shorts. When the Board of Trade reopened trading on all old July and later futures on June 3, such futures for all grains except oats promptly moved up to the new ceiling prices. This had the effect of reimposing upon shorts who remained in open position after prices reached the new ceilings the full financial responsibility of which had been relieved on May 13 with respect to all old futures except those for oats, and with respect to oats to the extent that prices moved upward toward the new ceiling price.

Keeping these facts in mind, as well as recognizing that failure of oats futures to move up to and stay at either the old or the new ceiling makes it impossible to compute accurately the incidence of financial responsibility for oats growing out of the increase in ceiling prices, the overall showing of Table 4 as to where profits and losses under the various regulations of the Board of Trade from March 26 through June 13 finally fell may be summarized as shown in Table 6.

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TABLE 6. TOTAL PROFITS AND LOSSES TO LONGS AND SHORTS RESULTING FROM FORCED SETTLEMENTS OF CHICAGO GRAIN FUTURES, MAY 13 - JUNE 13, 1946

Item	Effect of May 13 Ceiling Change		
	Bushels	Amount	Percent
Possible saving to shorts on May wheat settled March 26, 1946 1/	9,492,000	$ 1,423,800	10.1
Saving to shorts on futures liquidated by trading May 13-31 per regulation 1894	15,906,000	1,490,530	16.9
Total saving to shorts	25,398,000	$ 2,914,330	27.
Profit to longs on settlement of May futures defaults at new ceilings prices per Regulation 1897	14,639,000	$ 1,846,830	15.6
Profit to longs on open positions liquidated by open trading June 3-13 per Regulation 1898	[illegible]	22,330	1.4
Profit to longs on open positions closed out at new ceiling on June 13 per Regulation 1899	28,648,000	4,747,29[illegible]	[illegible]
Potential profit to longs on lots futures open June 13 but not closed out June 13 per Regulation 1899 2/	22,907,000	[illegible]	25.8
Total profit to longs	68,504,000	$ [illegible]	[illegible]
Total futures affected by restrictive trading and close-out orders	93,902,000	$[illegible]	100.0

1/This is the maximum possible saving based on assumption that these contracts would have remained open to May 31.

2/Computed at full ceiling change of 5 cents per bu. effective May 13, 1946. In fact, this amount was shared in an undetermined proportion between longs and shorts because the prices of September and December oats did not reach the old ceiling at any time from May 13 to 31, and similarly sagged below the new ceiling most of the time from June 3 to June 13.

The net effect, of the various actions taken by the Board of Trade, first shifting all of the financial responsibility arising under the ceiling price change of May 13, from shorts who were frozen in their short position to the longs, and then later reversing their position and shifting the responsibility back to the shorts by actions taken on May 31, and June 13, was to saddle $2,914,330 or 27 percent of the total potential loss on futures closed out on the longs, and to saddle shorts with the remaining $8,010,000 or 73 percent, of the potential increase in value of old futures resulting from the ceiling price increase. In other words, the vacillating actions of the Chicago Board of Trade protected shorts to the extent of 27 percent of the total potential "windfall" profit arising out of the ceiling price increases of May 13, and assured longs the remaining 73 percent. The effects of the various actions taken in through distributing losses and gains are described below.

Basing its action on the fact that continuance in effect of War Food Order No. 144 through May would make it impossible for any private interest to accumulate and control free wheat in position regular for delivery on the May future, the Board of Trade ordered all outstanding May wheat contracts prematurely liquidated on March 26, at the then prevailing ceiling price. On 9,492,000 bushels closed out on that date the new ceiling price of May 13, represented a potential profit to longs of $1,423,800. The March 26, close-out protected shorts against potential loss of like amount assuming that, under the circumstances, longs would have refused to liquidate their positions prior to May 13.

From May 13 to May 31, a total 15,906,000 bushels of all grains was liquidated by trades at or below the old ceilings in accordance with Regulation 1894. Computed at the difference between old and new ceilings, the longs who so liquidated sustained a potential loss of $1,490,530, and shorts benefitted to a like extent.

This left a total of 68,504,000 bushels of old contracts either open or in default at the close of trading on May 31. Of this total, May contracts that were in default represented 14,639,000. These defaults were settled at the new ceiling price under Regulation 1897. This shifted an actual loss of $1,846,830 from the longs who had,

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stood for delivery on their May contracts to the shorts who had previously been protected under Regulation 1894.

Also on May 31, the Board of Trade, by Regulation 1898, reopened trading at not to exceed new ceilings on all other old contracts outstanding. This order affected 53,865,000 bushels of old July and later months previously restricted to trading for liquidation. Prices for all grains except oats promptly moved up to the new ceilings. From June 3, the date on which trading reopened, to June 13, trading was small and prices, except for oats, became firmly frozen at the new ceilings. A total of 1,310,000 bushels of old contracts for grains other than oats, however, was liquidated at a possible profit to longs of $221,330.

This left a total of 28,648,000 bushels of old futures other than oats open on June 13. Longs, hoping for the termination of OPA controls on July 1, anticipated higher prices after July 1 and still refused to trade. On May 13, the Board of Trade, by Regulation 1899, closed out this open interest at the ceiling prices quoted at the close of trading on that day. This Regulation closed out 28,648,000 bushels of old contracts for wheat, corn, rye and barley at a profit to longs up to that date of $4,747,290.

This left a total of 23,907,000 bushels of old oats outstanding as of June 13. These contracts had been restricted to trading for liquidation only during the period from May 13 through May 31, and were thereafter open to trading until June 13. During this period old oats futures failed to reach ceiling until June 11, when it appeared that they might be closed out on June 13. They, however, were not closed out on that date, and soon fell away from ceiling, especially for contracts later than July. Since they were subject to Board of Trade restrictive regulations up to June 13, they have been included in the computation of potential profits on losses under Board of Trade regulations up to June 13. To the extent that prices failed to adhere to ceilings either before or after June 13, the potential profit shown was divided between longs and shorts up to June 13, and also thereafter.

In addition, the Board of Trade closed out all outstanding new futures for delivery of wheat in August and November 1946, and March 1947. This affected a total of 390,000 bushels of wheat futures consisting of 44,000 August, 62,000 November and 284,000 bushels of March (1947) wheat contracts, all of which had been traded under the new ceilings. No new futures are included in Table 6.

SECTION 3. INTEREST OF CLEARING MEMBERS IN ACTIONS TAKEN.

Number of Clearing Member Personnel on the Board of Directors in 1946

The governing body of the Chicago Board of Trade, collectively known as its Board of Directors, consists of 21 persons constituted as follows: The President, 2 Vice-Presidents, 15 Directors, elected from among the membership of the Chicago Board of Trade, and 3 nonmember directors elected by the Board of Directors.

At the time Regulation 1894 was adopted, 10 of the member-directors and 2 of the principal officers (12 in all) of the 18 members of the Board of Directors who were elected from among the membership of the Association were also firm members, officers or employees of clearing house members. The officers and directors, together constituting the Board of Directors of the Chicago Board of Trade as of February 11, 1946, were as follows:

Persons	Firm
1. Schaach, Harry C. (President)	(No Firm)
2. Uhlmann, Richard F. (1st. Vice-President)	Uhlmann Grain Company
3. McClinlock, J. O. (2nd. Vice-President)	Continental Grain Company
Directors with Clearing Member Affiliation:	
1. Altorfer, Geo. W.	J. S. Templeton's Sons
2. Bostrom, Carl E.	Lowell Holtt & Company
3. Combs, Earl M., Jr.	E. M. Combs & Son
4. Fischer, Albert C.	Mitchell, Hutchins & Company
5. Griffin, J. Hollis	J. S. Bache & Company
6. Hollis, G. Willard	Hales & Hunter Company
7. Hargrave, Homer P.	Merrill, Lynch, Pierce, Fenner & Beane
8. Hosty, Thos. E.	Sincere & Company
9. Miller, Frank A.	James E. Bennett & Company
10. Wagner, Lee H.	Norris Grain Company
Directors without Direct Clearing Member Affiliation:	
11. Elmer, Clarence W.	(No Firm)
12. Lee, Lacy J.	(No Firm)
13. Meyers, Sylvester J.	Arcady Farmer Milling Company
14. Morris, John S.	(No Firm)
15. Murray, John R.	Quaker Oats Company
16. Sonntag, Milton	Nonmember director
17. Wilder, Stephen W.	Nonmember director

Thus a majority of the directors, and the Board's two vice-presidents stood in a position of multiple interest in the confused actions taken by the Chicago Board of Trade during the months of May and June 1946. The responsibilities arising out of these multiple interests include their responsibilities to their respective concerns as well as for the welfare of the Chicago Board of Trade and the interests of the nonmember trading public which furnishes the backbone of trading on the Board at all times.

Nature of Business of Important Companies With Personnel on the Board of Directors

Among the clearing members from whose personnel officers and directors of the Chicago Board of Trade were drawn were large grain merchant-elevator operators such as Continental Grain Co., Norris Grain Co., and Hales & Hunter Co. Other directors were elected from among the personnel of such nation-wide brokerage concerns as J. S. Bache & Co., Merrill, Lynch, Pierce, Fenner & Beane and Mitchell Hutchins & Co. Others were drawn from the personnel of lesser brokerage companies, floor traders, processors and firms that combine commission brokerage with interest in the operation of country elevators.

Positions of Various Companies in the Market

One large merchandising company had a large open long position and very little short, while another merchandiser had quite large open positions both long and short, and a third had no open position at all during any of the period May 13 to June 13. Commission brokerage concerns tended to have larger short than long interest, as might be expected from the fact that for at least a year the principal speculative interest that they served had been predominantly on the short side of the market because with prices at ceiling about all there was to speculate on was the possibility that prices might decrease. This was by no means universally true,

however, for some commission brokerage concerns had open long interests greater than their open short interests.

Statements made to representatives of the Commission by representatives of several concerns having relatively large open short interests were to the effect their open positions with the Clearing House were for customers and, further, that firm members generally had little or no open short positions personally. These statements are borne out by the results of a special study of open accounts made by the Commodity Exchange Authority covering all open accounts of officers and Directors of the Chicago Board of Trade as of April 30, 1946.

Normal Method of Settling Futures Trades

Rules of the Chicago Board of Trade require that all trades made on its floor by its somewhat more than 1400 members, which trades are not offset by the member buying or selling (as the case may be) a like quantity of the same commodity for the same delivery, shall be reported to and cleared through a separate corporation known as the Board of Trade Clearing House. Approximately 60 members of the Chicago Board of Trade constitute the membership of the Clearing House, and all trades must be cleared through them.

The fact that the Clearing House deals only with the clearing members places them in the position of intermediaries between the Clearing House and all members of the Board of Trade and customers of the last named group. Traders are responsible to the clearing members, who in turn are responsible to the Clearing House, for all margins required to guarantee trades and other funds necessary to make it financially possible for Clearing House to substitute itself for both buyer and seller as provided in the Rules of the Chicago Board of Trade.

Normally the procedure in case of a change in price sufficient to reduce margins on deposit below the minimums required by the Clearing House is to close out the accounts of under-margined customers. The May 13 advances in ceiling prices created a situation in which margins on deposit for Wheat and Corn would have been insufficient to enable the Clearing House to liquidate frozen in short accounts had trading been continued and prices moved up to the new ceilings, as there was every reason to believe they would do, especially for near month futures, while the margins on deposit on old oats and barley contracts would automatically have fallen below the minimums required to be maintained, and rye would have fallen to the minimum required by Regulation 1821-A for all commitments other than hedging.

The frozen condition of the market already described made it practically certain that there would be little opportunity to liquidate under-margined short positions until new crop movement of free grain became sufficient to make possible deliveries of grain on maturing futures. This, obviously, would not occur for several months for any grain other than oats.

Under these conditions, clearing members, and other Board of Trade members responsible to clearing members faced the necessity of finding funds to cover under-margined accounts of their customers whose under-margined accounts could not be closed out. To maintain the financial solvency of the Clearing House, clearing members would have to dip into their own funds without adequate assurance of ability to collect funds so advanced from their under-margined customers who would be reluctant, and some financially unable, to respond to calls for increased margins.

Furthermore, in case of further price advances after July 1, beyond the new ceiling prices effective May 13, the total amount of such advance would have to be

added to the additional responsibility which it would be necessary to assume so long as under-margined accounts could not be closed out. Such possible assumption of financial responsibility for funds with which to enable the clearing house to settle defaults, may be conveniently expressed by the formula -

$$X = S(D-M)$$ 40/

in which X = additional funds to be supplied,
S = total short interest of clearing members
D = total increase in price per bushel, and
M = margin per bushel already on deposit for customers.

Division of Open Short Accounts Between Clearing Members With Personnel on the Board of Directors and all Other Clearing Members

Table 7 shows the total open short interest of 84,410,000 bushels 41/ of old contracts affected by trade restricting and close-out regulations of the Chicago Board of Trade during the period May 13 through June 13, 1946, subdivided to show the short interest, respectively, of clearing members from whose personnel 12 officers and directors of the Chicago Board of Trade were drawn and all other clearing members.

40/ Solution of the following problem yields this formula: If there is open with the Clearing House total long accounts L equal to total short accounts S, all margined at M cents per bushel, what additional liability do clearing members and their customers face to enable the Clearing House to make cash settlement if the price goes up D cents per bushel (which amount is greater than M) and the market is so frozen that short positions cannot be liquidated either by trading or by delivery of grain?

To make cash settlement, the Clearing House must have total debits and credits for clearing members and their customers to the algebraic sum of L(M+D) - SM - S(D-M) = 0. But the sum of debits and credits of clearing members with the Clearing House amounts to L(M+D) - SM ≠ 0. Equating these two with X representing the difference still due from clearing members and their customers to enable complete cash settlement gives

$$L(M+D) - SM - X = L(M+D) - SM - S(D-M)$$

Whence $X = S(D-M)$

What this last equation means is that when cash settlement becomes necessary under the conditions assumed, clearing members become initially liable to the Clearing House to the extent of their total undermargined short interest multiplied by the amount per bushel that the short interest is undermargined. Unless each clearing member puts up his share of the total, the Clearing House obviously will be short of funds to make complete cash settlement.

41/ This quantity does not include 3,547,000 bushels of May rye not under ceiling on May 11, and 39,000 bushels of December 1946, barley which was not closed out on June 13. It therefore differs from the total of open contracts shown by the Commodity Exchange Authority for May 11, by 3,606,000 bushels.

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TABLE 7. TOTAL "OLD" GRAIN FUTURES CONTRACTS CLOSED OUT PER ORDERS OF THE CHICAGO BOARD OF TRADE DURING THE PERIOD MAY 13 - JUNE 13, 1946, SUBDIVIDED TO SHOW THE SHORT INTERESTS OF CLEARING MEMBERS WITH WHICH 12 OFFICERS AND DIRECTORS WERE AFFILIATED AND THE INTEREST OF ALL OTHER CLEARING MEMBERS

	Total Open May 11			Liquidating Trading at Old Ceiling May 13-31		Balance Open May 31		Reduction to Open Trading June 3-13		Balance Closed Out June 13 at New Ceiling Price	
		Effect of Ceiling Increases									
	Bushels	Cents Per bu.	Amount	Bushels	Loss to Longs	Bushels	Profit to Longs at New Ceiling	Bushels	Possible Profit to Longs	Bushels	Profit to Longs
12 clearing members with officers and directors:											
Wheat: May contracts	-	-	-	-	-	-	-	-	-	-	-
Other old contracts	8,863,000	$ .15	$1,329,450	894,000	$ 134,000	7,969,000	$1,195,350	587,000	$ 88,050	7,382,000	$1,107,300
Total	8,863,000		$1,329,450	894,000	$ 134,000	7,969,000	$1,195,350				
Corn: May contracts	3,037,000	$ .25	$ 759,250	346,000	$ 86,500	2,691,000	$ 672,750	-	-	-	-
Other old contracts	3,651,000		912,750	21,000	5,250	3,630,000	907,500	65,000	$ 16,250	3,565,000	$ 891,250
Total	6,688,000		$1,672,000	367,000	$ 91,750	6,321,000	$1,580,250				
Oats: May contracts	4,191,000	$ .05	$ 209,550	490,000	$ 24,500	3,701,000	$ 185,050	-	-	-	-
Other old contracts	12,901,000		545,050	5,011,000	250,550	7,890,000	394,500	-	-	-	-
Total	17,092,000		$ 854,600	5,501,000	$ 275,050	11,591,000	$ 579,550				
Rye: May contracts	-	-	-	-	-	-	-	-	-	-	-
Other old contracts	3,166,000	$ .10	$ 316,600	432,000	$ 43,200	2,734,000	$ 273,400	6,000	$ 600	2,728,000	$ 272,800
Total	3,166,000		$ 316,600	432,000	$ 43,200	2,734,000	$ 273,400				
Barley: May contracts	181,000	$ .09	$ 16,290	56,000	$ 5,040	125,000	$ 11,250	-	-	-	-
Other old contracts	237,000		21,330	-	-	237,000	21,330	2,000	$ 180	235,000	$ 21,150
Total	418,000		$ 37,620	56,000	$ 5,040	362,000	$ 32,580				
Total directors & officers: May contracts	7,409,000	-	$ 985,080	892,000	$ 116,040	6,517,000	$ 869,050	-	-	-	-
Other old contracts	28,818,000	-	3,225,180	6,358,000	433,100	22,460,000	2,792,080	660,000	$105,080	13,9[illegible],000	$2,292,500
Total	36,227,000	-	$4,210,270	7,250,000	$ 549,140	28,977,000	$3,661,130				

TABLE 7. (continued)

	Total Open May 31	Effect of Selling Increases		Liquidating Trading at Old Selling May 31		Balance Open May 31		Reduction in Open Trading June 1-15		Balance Closed Out June 15 at New Selling Price	
	Bushels	Cents Per Bu.	Amount	Bushels	Loss to Longs	Bushels	Profit to Longs at New Selling	Bushels	Possible Profit to Longs	Bushels	Profit to Longs
All other clearing members:											
Wheat: May contracts	10,221,000	$ .10	$1,022,100	1,250,000	$ 47,500	8,971,000	$1,445,850	448,000	$ 66,000	4,480,000	$1,274,750
Other old contracts	1,200,000		1,200	200,000	38,500	1,000,000	300,000				
Total	11,421,000		$1,023,300	1,450,000	$ 86,000	9,971,000	$1,745,850				
Corn: May contracts	4,448,000	$ .25	$1,124,500	1,670,000	$ 418,750	2,778,000	$ 695,750				
Other old contracts	1,027,000		256,750	27,000	10,125	1,000,000	246,625	245,000	$ 60,250	1,245,000	$ 307,750
Total	5,475,000		$1,381,250	1,697,000	$ 428,875	3,778,000	$ 942,375				
Oats: May contracts	1,528,000	$ .05	$ 276,500	443,000	$ 22,150	1,085,000	$ 256,150	-	-	-	-
Other old contracts	26,587,000		1,329,350	4,577,000	228,850	16,010,000	964,450	-	-	-	-
Total	28,115,000		$1,605,850	4,971,000	$ 248,550	17,095,000	$1,220,600				
Rye: May contracts	2,665,000	$ .10	$ 266,500	665,000	$ 66,500	2,000,000	$ 200,000	11,000	$ 1,100	1,411,000	$ 155,210
Other old contracts	1,302,000		130,200	665,000	66,500	637,000	63,700				
Total	3,967,000		$ 396,700	1,330,000	$ 133,000	2,637,000	$ 263,700				
Barley: May contracts	198,000	$ .10	$ 19,800	11,000	$ 1,100	187,000	$ 18,700				
Other old contracts	191,000		19,100			191,000	19,100			191,000	$ 19,100
Total	389,000		$ 38,900	11,000	$ 1,100	378,000	$ 37,800				
Total other clearing members, 4 grains:											
May contracts	18,860,000		$1,818,900	4,039,000	$ 440,000	14,821,000	$2,360,450				
Other old contracts	29,315,000		2,935,400	5,469,000	343,975	23,818,000	2,594,925	693,000	$ 127,350	6,916,000	$1,801,860
Total	48,175,000		$4,754,300	9,508,000	$ 783,975	38,639,000	$4,955,375				
Grand total, all clearing members:											
May contracts	47,871,000		$4,813,700	2,304,000	$ 154,000	45,639,000	$5,146,834				
Other old contracts	66,779,000		6,687,600	5,914,000	343,975	60,865,000	6,263,925	1,341,000	$ 127,350	20,648,000	$4,347,050
Total	114,650,000		$11,501,300	8,218,000	$ 497,975	106,504,000	$11,410,759				

1/Does not include 5,567,000 bushels of May rye not under selling or 39,000 bushels of December barley not closed out on June 15.

Briefly, the showing is that at the close of trading on Saturday, May 11, the 12 clearing members with personnel among the officers and directors of the Board of Trade had a total open short interest of 36,227,000 bushels representing 42.9 per cent of the total of 84,410,000 bushels covered in the table. The balance of 48,183,000 bushels, or 57.1 percent, represents the short interests of all other clearing members. In other words, 12 clearing members from whom a majority of the management of the Board of Trade were elected, representing about one-fifth of all clearing members, had two-fifths of the total open interest on May 11.

They (and their customers) also bore the financial responsibility for about 44 percent of the ceiling price increase provided trading was continued and prices went to the new ceilings. Also, their proportion of the total financial responsibility tended to increase on each of the critical dates, May 31 and June 13, as indicated by the following percentages based on the data shown in Table 7:

With respect to reassumption of financial burden involved in the settlement of defaulted May corn, oats, and barley contracts at the new ceiling on May 31, the showing, based on Table 7 is that the 12 clearing members, on the whole, liquidated their open positions between May 13 and May 31 somewhat less rapidly than other clearing members. In consequence, their proportion of the total financial responsibility shifted to shorts on May 31 showed an increase over what it was on June 13. The percentage showing for May contracts, based on Table 7, is as follows:

Specifically, the 12 firms with personnel on the Board of Directors had 42 percent of the total open short positions on May contracts on May 11 and 44.5 percent on May 31. As a result, their proportion of the total financial responsibility for settlement of May defaults at the new ceiling increased from 41.0 percent on May 13 to 47.1 percent on May 31. In terms of dollars, this meant, as shown in Table 7, that the 12 firms on May 13 stood to benefit to the extent of $985,090 by settling all outstanding May futures at the old ceiling. Under Regulation 1897 these firms and their customers reassumed $869,050 of this amount. Other clearing members stood to benefit to the amount of $1,418,620 by settling at the old ceiling, but reassumed $977,780 of this amount on May 31 by settling defaults at the new ceiling prices.

40

For July and later contracts the showing is not greatly different from that for May contracts. Percentagewise, the showings for the two groups of clearing members on May 11, May 31 and June 13 are as follows:

OTHER OLD CONTRACTS

Group	May 11	May 31	June 13
	Percent	Percent	Percent
Bushels open short interest:			
12 clearing members with personnel on Board	43.2	41.7	48.6
All other clearing members	56.8	58.3	51.4
Total	100.0	100.0	100.0
Financial responsibility:			
12 clearing members with personnel on Board	45.4	45.3	48.3
All other clearing members	54.6	54.7	51.7
Total	100.0	100.0	100.0

Here the proportion of total short responsibility of clearing members with personnel on the Board of Directors tended to decrease slightly from May 13 to 31, in terms of both quantity and financial responsibility, and after a period of 10 days open trading in other futures, the division between the two groups of clearing members was more nearly equal than on either of the other dates. In terms of overall financial responsibility, this meant that on July and later contracts of all grains closed out, clearing members with personnel on the Board of Directors stood to gain $3,225,180 by closing all July and later contracts open on May 11 at the old ceilings. Subsequently, under Regulation 1897, they reassumed $2,397,580 (exclusive of July and later-month oats futures not closed out on June 13). Other clearing members stood to gain $3,872,440 by closing out all futures as of May 11. Subsequently, Regulation 1897 required them likewise to reassume the responsibility for $2,571,040 of this amount, exclusive of oats contracts, none of which were closed out on June 13. After 10 days of open trading, the balance of financial responsibility up to the new ceiling was assumed by both groups in the premature settlement of futures. Of the total of $4,747,290 so assumed, $2,292,500, or 48.3 percent, fell upon the 12 clearing members with personnel on the Board of Directors and $2,454,790, or 51.7 percent, on all other clearing members.

While Table 7 sets out in detail the quantities and financial responsibilities involved in the various actions taken up to June 13, it contains so much detail as to be difficult of interpretation as to the total responsibility of the two groups of clearing members and the final incidence of those responsibilities for each grain under the various actions taken from May 13 through June 13. Table 8, which is based entirely on Table 7, makes such a summary in more readable form.

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TABLE H. DISTRIBUTION OF TOTAL FINANCIAL RESPONSIBILITY FOR SETTLEMENT OF OLD FUTURES CLOSED OUT AT CEILING PRICE FOR EACH GRAIN SUBDIVIDED BETWEEN CLEARING MEMBERS WITH PERSONNEL ON THE BOARD OF DIRECTORS AND ALL OTHER CLEARING MEMBERS

	May 13		Absorbed by Longs in Trading From May 13 to May 31		Absorbed by Shorts in Liquidating Defaulted May Contracts		Balance Open June 1		Reduction by Trading June 1-13		Balance Closed Out June 13	
	Bushels	Amount	Bushels	Amount	Bushels	Amount	Bushels	Amount	Bushels	Amount	Bushels	Amount
Clearing members with personnel on board:												
Wheat	8,863,000	$1,329,450	894,000	$ 134,100			7,969,000	$1,195,350	587,000	$ 88,050	7,382,000	$1,107,300
Corn	6,688,000	1,672,000	367,000	91,750	2,691,000	$ 672,750	3,630,000	907,500	66,000	16,250	3,565,000	891,250
Oats	17,092,000	854,600	5,501,000	275,050	3,701,000	185,050	7,890,000	394,500 1/				
Rye	3,166,000	316,600	432,000	44,200			2,734,000	273,400	6,000	600	2,728,000	272,800
Barley	418,000	37,620	56,000	5,040	125,000	11,250	237,000	21,330	2,000	180	235,000	21,150
Total	36,227,000	$4,210,270	7,250,000	$ 549,140	6,517,000	$ 869,050	22,460,000 2/	$2,792,080 2/	660,000	$105,080	13,910,000	$2,292,500
All other clearing members:												
Wheat	10,221,000	$1,533,150	1,250,000	$ 187,500			8,971,000	$1,345,650	446,000	$ 66,900	8,525,000	$1,278,750
Corn	8,475,000	2,118,750	1,748,000	437,000	2,955,000	$ 738,750	5,664,000	976,000	193,000	48,250	3,711,000	927,750
Oats	26,113,000	1,305,650	4,974,000	248,700	5,125,000	256,250	16,017,000 1/	800,850 1/				
Rye	2,988,000	298,800	663,000	66,300			2,325,000	232,500	14,000	1,400	2,311,000	231,100
Barley	389,000	35,010	21,000	1,890	175,000	15,750	193,000	17,370			193,000	17,370
Total	48,183,000	$5,291,360	8,656,000	$ 941,390	8,255,000	$1,010,750	33,170,000 2/	$3,372,370 2/	653,000	$116,550	14,738,000	$2,454,970
Total all clearing members	84,410,000 3/	$9,501,630	15,906,000	$1,490,530	14,639,000	$1,879,800	55,630,000 2/	$6,164,450 2/	1,313,000	$221,630	28,648,000	$4,747,290

1/Open June 1, but none closed out June 13, hence omitted in subsequent columns. Changes occurring on these futures were determined by subsequent open trading rather than by Board of Trade Regulation.

2/Includes oats futures open June 1 but not closed out June 13, which are not given consideration in subsequent columns.

3/Does not include 3,567,000 bu. of May rye not under ceiling or 89,000 bu. of December barley not closed out on June 13.

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Here the showing is that clearing members from among whose personnel a majority of the Board of Directors was drawn stood to gain (or be saved from possible loss) to the extent of $4,210,270 by settling all old futures outstanding on May 13 at the old ceilings. Of this amount, $549,140 was realized at the expense of longs who liquidated at the old ceiling between May 13 and May 31. On May 31, $869,050 of the financial responsibility was reassumed by clearing house members and their short customers in the settlement of defaulted May futures, and the balance, amounting to $2,397,580 (exclusive of oats not closed out June 13) was reassumed in the form of probable loss in open trading from June 3 to June 13 and definite loss in the final close-out on the latter date of all old futures outstanding at the new ceiling prices. The table also shows the distribution of these responsibilities for the futures of each of the 5 grains affected by ceiling prices and close-outs from May 13 through June 13.

For all other members, the showings are similar. Starting with May 13, this group and their short customers stood to gain (or be saved from possible loss) to the extent of $5,291,060 on May 13. Of this amount $941,390 was absorbed by longs who liquidated at the old ceiling prices between May 13 and May 31. Responsibility to the extent of $977,780 was reassumed by clearing members and their short customers in the settlement of defaulted May futures at the new ceiling prices, and the balance (other than applicable to oats futures not closed out June 13) was reassumed through open trading from June 3 to 13 and the final close-out of futures on the latter date at the new ceiling prices.

In general, the showing is that, whereas Regulation 1894, adopted in accordance with the request and recommendation of the three-agency grain policy statement of May 8, relieved all clearing member firms of financial responsibility for ceiling price increases of May 13, to the extent of more than $9,501,000, approximately $8,010,000 was either reassumed in full or was reassumed to the extent necessary under open trading.

Protection Against Further Price Increases

One further point to be noted, however, is that the premature closing out of futures on June 13 relieved all open short interests of all further financial responsibility for any price increases in the futures that might occur after the anticipated termination of ceiling price control on July 1. In viewing this action, however, it is to be kept in mind that under the abnormal conditions prevailing for fully a year, the Chicago Board of Trade had permitted, for varying periods of time for the different grains, futures trading in corn, wheat, rye and barley when grain for the satisfaction of futures either did not exist at all, or could not be made available for the satisfaction of futures. The effect was the same as permitting future trading in grain that did not exist at all.

A somewhat similar situation had developed in the cash market where forward commitments for grain had been made under similar circumstances as to non-availability of grain. The making of such forward cash commitments had been encouraged to some extent by the continued trading in futures which fostered a false sense of security by permitting the placing of hedges, the insurance of value of which was largely nullified by orders prematurely closing out futures for specified months.

With speculative shorts and short hedgers frozen in their open positions by refusal of longs (including both hedgers and speculators on the long side of the market) to trade, the question of where the equities lay, as between longs and shorts, for financial responsibility both under ceiling price increases and possible price

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increases after July 1, 1946, was faced by the Chicago Board of Trade. It was resolved by the series of seemingly vacillating actions ending with the premature closing out of futures on June 13. Except for losses taken on liquidating trades at old ceilings from May 13 to May 31, and on May wheat closed out on March 26, the burden of the ceiling price increases up to June 13 was borne by shorts.

The action of June 13, however, relieved shorts from any further financial loss due to price increases after July 1, and correspondingly injured longs. Long hedgers especially were injured by having the fancied insurance protection of their long hedges rendered null and void after June 13. The extent of this potential injury to longs obviously would depend on the movement of cash and futures prices after June 30.

Price History After June 30, 1946

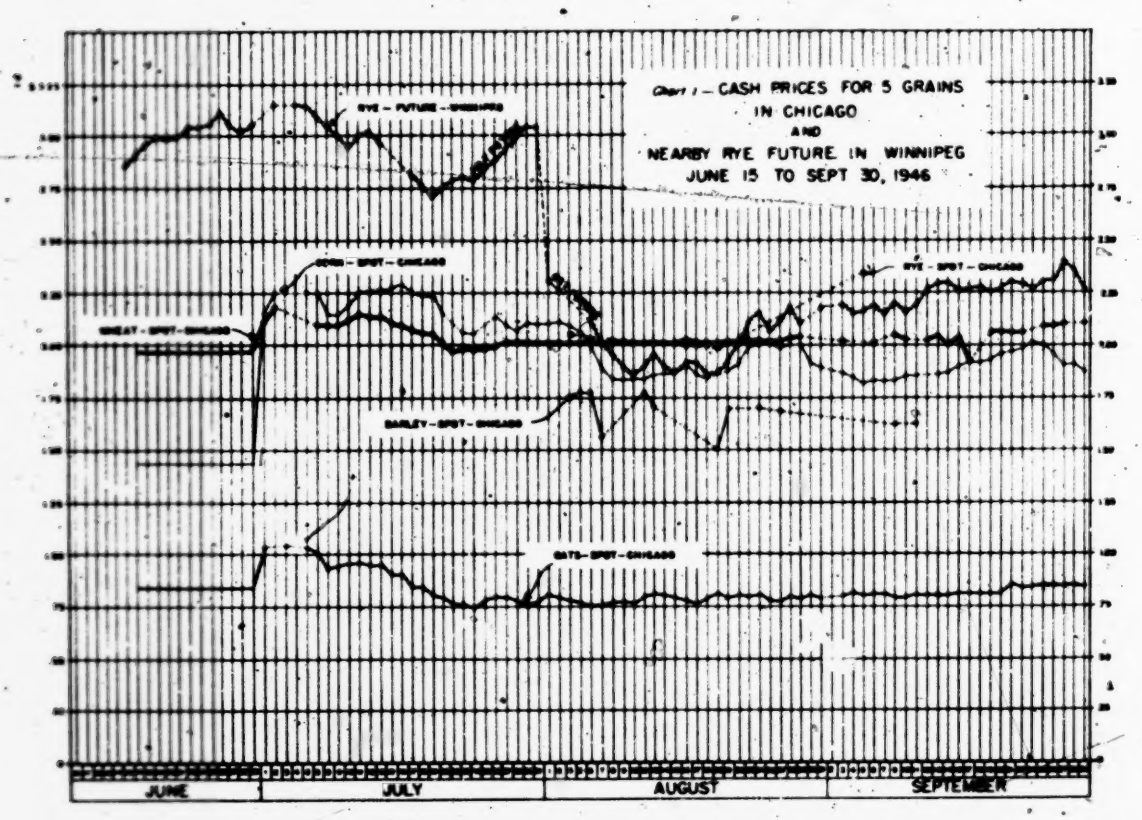
The reasons alleged in Regulation 1899 (ordering the closing out of specified old and some new futures outstanding as of June 13 at closing prices on that day) was that continued Government purchasing for relief would so deplete supplies for domestic trade as to render impossible the continuance on the Exchange of a free, open, and orderly market; prevent the performance and fulfillment of futures contracts in wheat, corn, rye and barley by delivery of grain; and enable purchasers of futures in such grains, in event of price increases, to require liquidation at exorbitant and extortionate prices.

Since Regulation 1899 protected open short interests then frozen in the market at the prevailing ceiling, it becomes pertinent to examine the extent of cash price increases in these grains after July 1. The general trend of cash prices for wheat, corn, rye and barley from July 1 through September 30, covering the period during which July, August and September futures in these grains would have matured had trading been continued, is shown in Table 9 and Chart I.

TABLE 9. DAILY CASH GRAIN PRICES AT CHICAGO, AND DAILY PRICES OF RYE FUTURES IN WINNIPEG FROM JULY 1 THROUGH SEPTEMBER 30, 1946
(Source, Chicago Journal of Commerce)

Day	WHEAT (Spot, Chicago)			CORN (Spot, Chicago)			OATS (Spot, Chicago)			RYE July		RYE August		RYE September		BARLEY		
	July	Aug.	Sept.	July	Aug.	Sept.	July	Aug.	Sept.	Chicago (Spot)	Winnipeg 2/ (July Future)	Chicago (Spot)	Winnipeg 2/ (Oct. Future)	Chicago (Spot)	Winnipeg 2/ (Oct. Future)	July	Aug.	Sept.
1	$2.15 1/2	$2.02		$2.15	$2.10 3/4		$1.04	$ .81 5/8										
2	2.18	2.1[illegible]		2.25 2/	2.11¢			.79¢			$3.15		2.31¢					
3		2.01 3/4	$2.[illegible]		2.09¢	$1.87 3/4	1.05	.78¢	$ .82 1/8				2.26¢				$1.78	
4					1.84¢				.84		3.15	$2.06			$2.19 3/4			
5		2.01 3/4		2.25	2.07	1.83¢	1.03	.77 5/8	.82 3/4		3.15			$2.35	2.17 3/4			
6	2.10 2/	2.01	2.02	2.25	2.00	1.81¢	1.00	.75¢	.82 3/4	No	3.10		2.11¢		2.16¢		1.78	
7		2.01¢			1.89	1.84¢		.78 3/8	.82¢				2.01¢		2.17 5/8	No	1.78	
8	2.10	2.01¢		2.14	1.84 3/8		.93	.77 3/8		Sales	3.05		1.96 5/8		2.19 3/8		1.57	
9	2.09¢	2.03	2.04 3/4	2.15¢	1.83	1.84	.96¢	.78¢	.79 3/4		3.00		1.90¢		2.16 5/8	Sales		$1.63
10	2.13¢	2.02 2/	2.03¢	2.19	1.83¢	1.86¢	.97¢	.77 3/4	.79 7/8	Re-	2.96		1.84¢		2.21¢	Re-		
11	2.15			2.25		1.86	.97		.81¢		10				2.18¢			1.63
12	2.14	2.02¢	2.03¢		1.84¢		.96¢	.8[illegible]	.81	cord-	3.01		1.91¢		2.20¢	cord-	1.78	
13	2.14	2.02¢	2.04¢	2.26	1.85¢	1.86	.96¢	.81	.81¢	ed	2.96		1.97¢		2.27¢	ed	1.72	
14		2.01 3/4	2.00		1.87	1.88		.9[illegible] 3/4	.81 3/8				1.69		2.29			
	2.11¢	2.[illegible]		2.26¢	1.87		.92	.79					1.85					
16	2.[illegible] 3/4	2.03	2.04 3/4	2.28	1.92 3/4	1.89¢	.9[illegible]	.78 3/4	.82¢			2.00	1.89 3/4		2.28 3/4			
17	2.17¢	2.0[illegible]	1.92 2/	2.2[illegible]	1.86	1.92¢	.85	.77¢	.82 [illegible]		2.81		1.89¢		2.28 3/8			
18	2.16			2.23		1.92	.86		.82¢		2.78				2.27			
19	2.[illegible]	2.02	2.05	2.23	1.84¢	1.93	.8[illegible]	.79 7/8	.82 3/8		2.71		1.86 7/8		2.25			
20	2.[illegible]	1[illegible] 2/	2.06	2.16		1.95	.79	.80 3/8	.82 5/8		2.75	1.98	1.89 3/4		2.28 3/4		1.51	
21		2.02¢	2.[illegible]		1.88	1.97¢		.79¢	.86				1.93 3/4		2.30		1.72	
22	1.97 1/2	2.[illegible] 2/	2.[illegible]		.92¢		.76	.81			2.80		2.03 3/4					
23	.98¢	2.05 2/	2.[illegible]	2.16¢	.99¢	.99¢	.76 3/4	.80	.84 3/8		2.81 3/4		2.1[illegible]		2.29¢			
24	1.98¢	.[illegible]6		.[illegible]6	2.[illegible]0	2.01	.75 3/4	.80 3/8	.85 3/4		2.79		2.15		2.27¢		1.72	
25	1.98	2.[illegible]6			2.[illegible]0	2.[illegible]0	.78		.86 1/8		2.84		2.07 3/4		2.30¢			
26	1.99¢	2.03¢	2.[illegible]	2.[illegible]	2.01	1.96 1/	.80 3/4	.78 7/8	.86 5/8		2.89				2.36 3/8			
27	2.01	2.03¢	2.[illegible]0	2.14¢	1.99¢	1.92¢	.80¢	.78¢	.86 1/8		2.94		2.12¢		2.40		1.70	
28		2.04¢			2.00	1.92		.80¢	.86 1/8				2.18		2.37 3/8			
29	2.[illegible]0	2.04		.[illegible]2¢	2.[illegible]0		.78 3/4	.79 3/4			2.99		2.12 3/4					
30	2.[illegible]		2.[illegible]0	2.11¢	1.92¢	1.87¢	.76	.81 1/8	.85 3/4		3.04		[illegible]		2.27 5/8			
31	2.1[illegible]			2.11¢	1.9[illegible]		.77 7/8	.79 7/8			3.04		2.19 3/4					
Simple Average	$2.060	$2.025	$2.049	$2.183	$1.941	$1.906	$ .890	$ .792	$ .832		$2.943	$2.01	$2.023	$2.35	$2.257		$1.704	$1.63

1/ Exclusive sale of white corn; including such sales, quotation would be $2.16¢.
2/ These quotations from New York Journal of Commerce.



Estimated Protection to Shorts on Old Contracts Closed Out June 13

Based on the average of spot price quotations in Chicago for the months of July, August, and September, insofar as such quotations are available, Table 10 persents an estimate of the probable increase in value of quantities of wheat, corn, rye, and barley contracts for those months that were closed out on June 13.

TABLE 10. PROBABLE INCREASE IN VALUE OF JULY, AUGUST AND SEPTEMBER WHEAT, CORN, RYE AND BARLEY CONTRACTS CLOSED OUT ON JUNE 13 HAD TRADING BEEN CONTINUED TO THE TERMINAL MONTHS

	Bushels Closed Out June 13	Ceiling June 13	Cash Price in Terminal Month		Increase in the Value of Futures	Average Per Bushel Closed Out
			Average Price	Increase on June 13		
Wheat:						
July	5,074,000		$2.068	$ .080	$ 406,920	
August	44,000	$1.985	2.023	.038	1,672	
September	5,774,000		$2.049	$ .064	369,536	
Total	10,892,000				$ 777,128	$ .071
Corn:						
July	3,558,000	$1.465	$2.183	$ .718	$2,554,644	
September	3,718,000		$1.905	$ .440	1,635,920	
Total	7,276,000				$4,190,564	$ .576
Rye:						
July	2,679,000	$1.565	$2.01	$ .425	$1,138,575	
September	1,739,000		$2.35	$ .765	1,330,336	
Total	4,418,000				$2,468,910	$ .559
Barley:						
July	210,000	$1.350	$1.704	$ .454	$ 73,290	
September	216,000		$1.63	$ .275	59,400	
Total	426,000				$ 132,690	$ .311
Total, All Grains	23,012,000				$7,569,292	$ .329

Wheat

With the expiration of price controls on July 1, 1946, the cash price of contract or better grade of wheat moved sharply up as shown in Chart I from the level of $1.97 per bushel prevailing under government controls to $2.18 on July 2, and reached its maximum of $2.15 on July 11. Thereafter its price sagged to only slightly above the June ceiling during latter part of the month, and finally leveled off at about $2.02 for most of August. During September, prices were scattered and fluctuating with an upward trend to $2.10 1/2 on September 27, and $2.11 on September 30.

There was no trading whatever in wheat futures on the Chicago Exchange until August 26, when trading was opened on January, March, and May 1947 futures only. These three futures closed on dates approximately 5 days apart from August 26 to September 30 at the following prices:

Date	January	March	May
August 26	$1.97	$1.94	$1.92
August 31	1.96½	1.92½	1.90
September 6	1.95½	1.91½	1.89½
September 10	1.95 3/4	1.89 3/4	1.87
September 14	1.97	1.88 3/4	1.85
September 20	1.97 3/4	1.92½	1.88
September 25	2.02 3/8	1.97	1.93
September 30	2.01	1.96 3/8	1.92½

[fol. 621]

Since there was no trading in July, August or September wheat, it is impossible to know whether trading in these futures would have influenced the cash price. The general indication, however, would seem to be that with a bumper crop of wheat ready for market, the trade discounted the future, and the exorbitant prices feared by frightened shorts and expressed by the Chicago Board of Trade in Regulation 1899 failed to develop in cash trading, and might not have developed had there been trading in futures for these two months.

Nevertheless, the saving to shorts by closing out July, August and September contracts on June 13, was appreciable. Assuming that shorts would have lost at least the difference between the price at which their positions were closed out on June 13 and the average of published spot prices for contract grade wheat in each of the terminal months, the saving to shorts (and the loss to longs) through the June 13 close-out of 10,892,000 bushels of July, August and September wheat contracts would probably have been of the order of $777,128 as shown in Table 10. This would represent a saving to shorts and corresponding loss of potential profit to longs of 7.1 cents per bushel.

Corn

For corn, the showing is quite different from that for wheat. Here, the spot price for contract grade rose more sharply from $1.44 (nominal) on June 30 to $2.15 on July 1, and to its maximum of $2.28 on July 16, and averaged $2.183 per bushel for the month. Thereafter cash corn sagged in price and averaged $1.905 for September.

As shown in Table 10, the probable saving to shorts (and loss to longs) from prematurely closing out 7,276,000 bushels of July and September corn futures contracts would have been of the order of $4,190,564. This amount would represent an average saving to shorts of 57.6 cents per bushel of contracts closed out.

For corn, the supply was very short, with no appreciable quantity of new crop available for some time after September 30. High prices brought out corn previously not visible in July and August. Under these circumstances, continued trading would have occasioned shorts very heavy losses. On the other hand, closing out the futures prematurely caused correspondingly heavy potential losses to longs. Protection of shorts wholly nullified the insurance value of all long hedges. The losses that some long hedgers were obliged to take under their firm forward cash commitments were large. In some instances special arrangements were made between grain merchants who were so hedged and their cash customers whereby the increase in price was divided between them on some agreed upon basis.

In addition, the fact that no adequate hedging protection was available to grain merchants caused them to be reluctant to buy and stock corn on any basis. Buying and selling cash corn became buying only against firm orders in hand. One grain merchant interviewed, who had been able to make an adjustment of the type described above with a large cash customer, stated in August that without adequate hedging protection, he was buying corn only to fill commitments and was bidding in the country on a basis to yield him merchandising margins much larger than usual, even on corn for which he had firm orders. He stated that he would buy no cash corn for storage on his own account except on such a basis as he considered might yield him 15 to 20 cents per bushel whereas, with hedging protection, he would be willing to handle grain on a margin of 3 to 6 cents per bushel. This meant that, in general, he was offering the farmer from 14 to 17 cents per bushel less than he might otherwise have done.

Similar procedure was stated to be true to only a less extent for other grains for which many country elevators either likewise bid low prices, or accepted the farmer's grain for storage subject to pricing when sold. Thus, without hedging protection, grain merchants widened their margins at the expense of the farmer in order to cover their uninsured risk as merchants, or shifted the risk of possible price recession entirely to the farmer until such time as his grain was actually sold in the uncertain and fluctuating market.

Rye

July and September rye contracts represented the third largest quantity of contracts prematurely liquidated on June 13. There was no trading in any rye future in Chicago after June 13. Here, the supply was abnormally short and little cash rye went through public cash market channels in Chicago during the months of July, August and September. There were, in fact, no cash market quotations in July, only 3 in August, and 1 in September. The average for the 3 August quotations was $2.01 per bushel, and the single quotation for September was $2.35.

Assuming that the July rye future could not have been closed out at less than the average of $2.01 for the 3 quotations in August and that September contracts were closed out at $2.35, an extremely conservative estimate of the gain to shorts (and loss to longs) resulting from premature closing of July and September rye contracts would have been of the order of $2,468,[illegible], or an average of 55.9 cents per bushel on the 4,418,000 bushels closed out. This estimate is based on an assumed increase of 42 1/2 cents per bushel for the July future and 76 1/2 cents per bushel for the September future as shown in Table 10.

Another estimate of the possible protection to shorts might be based on the price of rye futures in Winnipeg, where it is understood there was no price control over the future. It also appears that the price of Winnipeg futures contemplates delivery at Fort William or Port Arthur from which points Lake - rail rates for shipment to eastern points do not vary greatly from those on shipments from Chicago. Therefore, the Winnipeg price would appear to represent fairly well the world price for rye either at Canadian shipping points or at Chicago.

As shown in Table 8 the average price of the July future in Winnipeg during July was $2.943 per bushel, while the average for the October future, which most nearly corresponds to Chicago's September contract, was $2.023 for the month of August and $2.257 for September. With the exchange rate for free Canadian dollars at 96, which prevailed during much of July and throughout August and September, these Canadian prices would be equivalent roughly to $2.825 per bushel for July, and $2.167 for September. Based on these equivalents in U. S. dollars, the possible savings to shorts would be of that order of $4,334,058 computed as follows:

Future	Bushels	Ceiling June 13 (per bu.)	Canadian Price at Par (per bu.)	Increase in Value (per bu.)	Amount
July	2,679,000	$1.585	$2.825	$1.240	$3,321,960
September	1,739,000	1.605	2.167	.562	1,012,098
Total	4,418,000				$4,334,058

On this basis, the average saving to shorts, and loss of potential profit to longs, resulting from the June 13 close-out was of the order of $.981 per bushel as compared with $.559 based on the few cash sales made in Chicago. The actual financial effect possibly lies somewhere between these two extremes. On either basis the saving to shorts, and the loss of potential profit to longs, was large.

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Barley

Barley is relatively unimportant in volume of futures trading. Only 426,000 bushels of July and September contracts were closed out on June 13.

Two series of cash quotations for the Chicago market are, respectively, for feed and malting barley of No. 2 or better grade. There were no official quotations for either during July, 10 for both in August, and only two, both for feed barley, in September. All other prices quoted were "nominal." Since the prices for the two qualities did not differ greatly they have been combined into one series and averaged in Table 9.

If it is assumed that the July futures could not have been closed out at less than the average of $1.704 per bushel for official cash sales in August, and that September futures might have been closed out at the officially quoted cash price of $1.63 in September, the saving to shorts (and loss to longs) on 426,000 bushels of barley contracts closed out prematurely on June 13 would be of the order of $132,690, as shown in Table 10. This would amount, on the average, to about 31 cents per bushel.

Total July, August and September Contracts

A total of 23,012,000 bushels of July, August and September wheat, corn, rye and barley futures were closed out prematurely on June 13. Recognizing that it is impossible to estimate with accuracy the benefits to shorts, and loss to longs, through these close-outs, a conservative estimate based on the record of official cash prices for these grains in Chicago, would be, as shown in Table 10, that the total involved would have been of the order of $7,569,292. This total does not take into consideration any futures for months subsequent to September 1946, for which no cash price history is yet available.

If however, the benefit to shorts is computed for rye on the basis of Winnipeg futures, the total would be of the order of $9,434,440.

Using the more conservative total of $7,569,292, and adding this amount to the total saving to shorts of $2,914,330 arising out of premature closing out and liquidation of futures at old ceilings prior to May 31 as shown in Table 5, yields a total estimated protection to shorts arising out of actions of the Board of Trade of the order of $10,483,622.

If, however, the estimate for rye based on Winnipeg futures is used, the total estimated protection to shorts becomes of the order of $12,348,330.

Over against these estimated total savings to shorts it is to be noted that by settling defaulted May futures at ceiling, and by trading out and finally settling old futures (other than oats) at ceilings through June 13, shorts assumed actual financial responsibility for ceiling price increases to the extent of $6,815,450. (See Table 5.) Taking this assumption of responsibility into consideration, the statement of net benefit to shorts, including estimates for price increases after July 1 on July, August and September contracts settled on June 13, may be stated as follows:

Estimated saving to shorts after June 13 close-out	$ 7,569,292	$ 9,434,440
Actual saving to shorts from closing out May wheat on March 26 and liquidating trades in other futures at old ceilings, May 13 - 31	2,914,330	2,914,330
Total saving to shorts	$10,483,622	$12,348,770
Less financial responsibility assumed in May defaults, open trading, and premature close-outs at new ceilings through June 13	6,815,450	6,815,450
Net saving to shorts	$ 3,668,172	$ 5,533,320

On whatever basis the estimate of savings to longs on price increases after July 1 is based, it seems obvious that net savings to shorts were larger by some 3 1/2 to 5 1/2 million dollars than were the actual financial responsibilities assumed by them. In other words, the actions of the Board of Trade, while burdening shorts with a considerable portion of the total loss arising out of ceiling price increases, actually benefitted them in protection against price increases after July 1 to a far greater extent than they previously had been burdened.

SECTION 4. RESUME OF GENERAL ECONOMIC EFFECTS

Effects on Hedgers

The effect on hedgers of closing out old futures at the old ceiling prices from March 26 through May 31 depended on whether their hedges were long or short. Grain merchants and processors who had bought futures against forward commitments for cash grain or processed products which they did not yet own found the value of their long hedges destroyed altogether by the actions of the Board of Trade on March 26, May 12 and June 13. These actions nullified the expected price protection of their hedges leaving them still obligated to buy grain at increased prices to meet their commitments in cash grain and grain products. The actions of May 31 settling defaulted May futures and reopening trading in other outstanding old futures restored the insurance value of May futures to the extent of the increase in ceiling price, but only to those who had refused to liquidate at the old ceiling in accordance with Regulation 1894. It did not restore the insurance value of any long hedges in May wheat prematurely closed out on March 26, nor any other long hedges in May or later contracts for other grains that were closed out by liquidating trading at the old ceiling during the period May 13 to June 31. Long hedgers who were in these last positions had real basis to feel that they had been discriminated against by the wavering action of the Board of Trade on May 12 and May 31.

On the other hand, merchants and processors who had sold futures against actual holdings of grain or grain products on hand (short hedges) were relieved of loss on their open short positions. Many such hedgers, having disposed of the cash products hedged, were unable to lift their hedges due to the narrowness and one-sidedness of the market and were, therefore, forced into an open speculative position with no grain under their control and with little possibility of obtaining any for the satisfaction of their open short position. They, along with purely speculative shorts, stood to benefit from the Board's May 12 action, and to be injured to the full extent of the ceiling price increases by the Board's May 31 actions closing out defaulted May futures and reopening trading on all other old futures at the new ceiling. They were again benefited by the Board's May 13 order closing out specified futures at the new ceiling as this action freed them of liability for any price increases that might occur after July 1.

Two cases filed against the Board of Trade, one alleging injury to a long hedger and the other alleging injury to short hedgers, are outlined as exemplifying the effects on long and short hedgers, respectively.

Cargill Inc. v. Board of Trade of the City of Chicago

Immediately after the Board's May 12 action, Cargill Inc. filed suit, alleging financial injury to the amount of slightly more than $1,000,000 on an open long position, alleged to represent long hedges. Cargill further alleged price fixing contrary to the Sherman Act, and sued for triple damages.42/ This suit was rendered pointless, so far as the ceiling price increase was concerned, by the action of May 31 closing out defaulted May futures at the new ceiling for the reason that long hedgers who had refused to liquidate at the old ceiling then got the full benefit of the ceiling price increase. There still remained, however, the question as to whether subsequent increase in cash grain prices might still leave Cargill Inc. in position to claim further injury due to premature closing out of July and later futures on June 13, which action protected shorts against price increases after July 1 and correspondingly injured longs.

Daniel et al. v. Board of Trade of the City of Chicago

Whereas the Cargill suit was based on injury to the long hedgers by the Board's action of May 12, the second suit, filed jointly by Floyd Daniel, an individual; Universal Mills, a corporation of Fort Worth, Texas; Union National Mills, a corporation of Springfield, Ohio, and R. L. Harrison & Son, a partnership of Bagdad, Kentucky, alleged injury by the action of May 31 closing out May defaults and reopening trading in other contracts at new ceiling prices. The gist of the complaint was that as a result of conditions prevailing in the trade and earlier actions of the Chicago Board of Trade, the plaintiffs were unable to lift hedges and were thereby forced into open short positions on May 31, and were thereupon "wrongfully penalized" by Regulation 1897 with respect to May futures, and by Regulation 1899 with respect to later-month wheat, corn and oats futures. The complaint also alleged that on June 4, 1946, the Clearing Corporation advised clearing members that since Regulations 1897 and 1898 were being challenged in the courts: "Therefore, it is understood that all amounts now and hereafter paid to you under the terms of these regulations, or either of them, shall be returned to us should either or both regulations ultimately be held invalid by the courts" and that, pursuant to this, all members of the Clearing Corporation were holding such controverted monies and funds in trust for the Clearing Corporation, thus tying up funds of the plaintiffs. Damages to the amount of $124,750 were alleged and the plaintiffs prayed that the Court: Determine the rights and liabilities of all parties; take custody of funds held in trust by members of the Clearing Corporation, administer such funds, and disburse them by receiver to persons found by the Court to be entitled to them; that the plaintiffs have judgment for their damages and recovery of costs and attorneys' fees, and that the Court make such other orders as it deemed proper 43/

Belz v. Board of Trade of the City of Chicago

A third case arising out of premature settlement of contracts on June 13, in accordance with Regulation 1899, was that of Raymond A. Belz, an elevator operator of Conrad, Iowa. This case was somewhat similar to the Cargill Case, but was filed later and alleged injury by the June 13 close-out. Belz alleged that on or about September 11, 1945, he became obligated to deliver 75,000 bushels of cash corn at $1.13 per bushel to be delivered at the rate of 1,500 bushels weekly beginning in September 1945. It was further alleged that a long hedge of 75,000 bushels of corn futures (maturity dates not specified) was purchased against this sale at a

42 Cargill Inc. v. Board of Trade of the City of Chicago, Civil No. 48 C 935, U. S. Dist. Ct. Northern Dist. for Illinois, Eastern Division.

43 Floyd Daniel, Universal Mills, Union National Mill and R. L. Harrison & Son v. Board of Trade of the City of Chicago, et al., Civil 48 C 1900 in Dist. Ct. of the U. S., Northern Dist. of Ill., Eastern Division.

price of $1.18 1/2 per bushel, which contracts Regulation 1899 ordered settled on June 13, 1946, at $1.46 1/2, or 28 cents per bushel over the purchase price. It appears, further, that Belz had been unable to purchase corn to fill his cash contract, as it was alleged that he was still obligated to deliver at the contract price of $1.13 and that the buyer threatened action to force delivery by suing for 50 to 75 cents damages. The plaintiff alleged that he could not buy corn, that Regulation 1899 was invalid, and that he was entitled to specific performance on the futures contract.[44]

Effects on Spreaders

Reference was made in the Daniel complaint to the fact that the validity of Regulation 1897 (settling defaulted May futures in corn, oats and barley at the May 13 ceiling) and Regulation 1898 (reopening trading in July and later month old futures) was being contested in the courts. This reference apparently is to a case filed by Robert W. Buckley, a member of the Chicago Board of Trade, involving the effect of the Board's actions on spreaders.

Buckley v. Board of Trade of the City of Chicago

This case was brought under the Commodity Exchange Act. The complaint alleged that at the time Regulation 1893 (closing out May 1946 wheat contracts on March 26, 1946) was adopted, Buckley was long of May wheat and short July, September or December as a spread against May. The May wheat was closed out on March 26, at $1.83 1/2. This forced Buckley into a speculative short position in later months instead of a spread position. The complaint alleged further that subsequently, because of suit (Cargill case) having been brought against the Board of Trade for having issued Regulation 1894 (close-out order as of May 12) the Board, on May 31, issued Regulations 1897 and 1898, reversing its position of May 12 with the result that plaintiff was required to margin his short speculative position in July and September futures, whereas he originally was in a spread position. This, the plaintiff alleged, was contrary to normal procedure and contrary to contracts originally entered into, and that thereby the plaintiff might be deprived of property contrary to law. The plaintiff, therefore, prayed the court that the Board and its officers and directors be enjoined from doing anything further to carry out Regulations 1897 and 1898 which, respectively, settled defaulted May contracts at the new ceilings and reopened trading in other old contracts at the new ceiling prices; that Regulations 1897 and 1898 be declared illegal and invalid and enjoined; that defendants be enjoined from confiscating plaintiff's property and that plaintiff have such other relief as the court deemed proper.[45]

Buckley's attempt to obtain an injunction against the opening of the Board of Trade for the resumption of trading on June 3 was promptly denied by the Court so that opening was delayed for only about two hours. The Buckley Case, however, exemplifies the effect of the Board's actions on spreaders who were long nearby-month contracts and short distant months. Had his spread position been short in the nearby-months and long in distant ones the effect on his interest would have been reversed. He then would have had his frozen short position closed out at the prevailing ceiling price with possibility of benefit on his distant long position in case of increase in price. He, however, would have been forced into a speculative position on his long position in distant months with consequent necessity of margining his open trades, whereas, on spreading transactions in grains other than 1946 rye, no initial margin was required.[46]

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[44] Raymond A. Belz v. Board of Trade of the City of Chicago Clearing Corp. Equity 48 C 1229, U. S. Dist. Ct. for the Northern Dist. of Ill., Eastern Division.

[45] Robert W. Buckley v. Board of Trade of the City of Chicago, Board of Trade Clearing Corp. et al., Civil 48 C 1369 in the U. S. Dist. Ct. for the Northern Dist. of Ill., Eastern Division.

[46] Regulation 1922-A.

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Effects on Speculators

Due to the fact that prices of grains other than oats were, in the language of the trade, "frozen against ceilings" for months prior to May 1946, there was little to speculate on, so long as ceiling prices remained unchanged, except a possible falling away from ceiling. In addition, the policy of the Chicago Board of Trade adopted as early as July 1945, of settling defaulted maturing contracts at ceiling, representing no penalty to shorts who had sold futures at ceiling, lulled professional speculators into a feeling of confidence that they need give little or no consideration to whether they could obtain grain for delivery on their open short positions in which they were very largely frozen by the thinness and onesidedness of the market. The maximum risk that they were taking would be settlement of defaults at ceiling. Viewing this situation in retrospect, the question may be raised as to whether the Board of Trade management actually fostered and permitted the continuance of what amounted to reckless and unbusinesslike dealing which its Rule 146 declares to be "inconsistent with just and equitable principles of trade." At any rate the speculative interest, both large and small, came to be predominantly on the short side of the market with confidence that it was not incurring risk. Defaults were in fact invited.

Over against this, the long side of the market came to be predominantly hedgers buying futures against forward cash commitments for grain and grain products, and relatively few long speculators, of whom some were, contrary to normal conditions, willing to take delivery. All this not only created a thin, onesided market, but one in which offerings of speculative sellers, predominantly at ceiling in order to be in position to benefit from any sagging of prices, tended to make futures prices adhere strongly to ceilings. With longs hungry for grain, or protection, or profit in cash settlements of defaults, and refusing to sell, short positions once established, were practically frozen.

All this occurred long before War Food Order No. 144 made it impossible for those short of wheat to accumulate and hold stocks of grain for the satisfaction of futures, and long before the Government's premium paid for corn likewise swept the market clean of available supplies of that grain. These factors merely accentuated the situation.

The price increase of May 13 placed the full burden of the increase on the frozen-in short speculators. It also operated to the benefit of speculative longs who merely joined long hedgers in refusing to sell.

Briefly, then, the actions of the Chicago Board of Trade, as shown in detail in preceding sections, affected the interest of the predominantly short speculative interests as follows:

1. The action of May 12, taken in accordance with the request and recommendation contained in the three-agency statement of government policy respecting grain of May 8, protected the predominantly short speculative interests against any part of the ceiling price increase of May 13.

2. The actions of May 31 settling defaulted May contracts and reopening trading in other old contracts at the new ceiling assessed the full burden of ceiling price increases on defaulting shorts and imposed the same responsibility on shorts with respect to other old contracts to the extent that might be necessary to liquidate their positions in open trading. Prices promptly moved to the new ceilings so that practically all shorts were required to assume the full burden.

3. The action of June 13 closing out specified futures at the new ceiling assessed the full ceiling advance on short speculators, but, at the same time freed them of any financial responsibility for price increases that occurred after the expiration of price controls on July 1.

Effects on Clearing Members

If the Clearing Corporation was to remain solvent in being substituted as seller to the buyer, and as buyer to the seller, in clearing future delivery contracts as provided in the Board's Rule 314, it became necessary for the various members of the Clearing Corporation, through whom all customer trades must be cleared, to assume the initial responsibility of providing funds to the clearing house. The rule is that the Clearing Corporation shall have all of the rights and be subject to all of the liabilities of the original parties to contracts cleared. It must, however, look to its clearing members for its funds, and they in turn must look to their customers for funds for the settlement of all trades cleared.

This responsibility was large on all short accounts which automatically became undermargined as the result of the May 13 ceiling price increase, and which would have become still further undermargined under the open market price increases that would have occurred had trading in futures been continued after price controls expired on July 1. Many short speculators, especially of the smaller, less professional group, some of whose buying orders had remained unexecuted for months, neither were inclined, nor, in some instances, were they financially able, to bear the additional financial burdens. This would make it difficult and, in some instances, probably impossible for the Clearing Corporation and its clearing members to collect the funds necessary to maintain its solvency.

Having permitted a bad situation to develop in extremely aggravated form by continuing "business as usual" under such abnormal conditions that "usual" methods of operation were inapplicable, the Board of Directors of the Chicago Board of Trade, a majority of whose members were drawn from the personnel of large clearing member firms, sought too late a solution of the equities of the situation by closing trading and liquidating outstanding contracts under frozen market conditions.

While the various actions taken in part protected, and in part penalized those frozen in short positions, and likewise divided the responsibility of clearing members, the actions, taken did not protect the interests of the 12 large clearing members with personnel serving on the Board of Directors, and their short customers, any more than they protected the interests of other clearing members and their short customers. Neither did those actions adversely affect the long interests of the 12 clearing members and their customers any more adversely than the long interests of all other clearing members were affected. Both longs and shorts had been trading in something that, in effect, did not exist. The general situation as to supply had actually practically severed the always tenuous connection between the cash and the futures market long before any measures were taken to remedy the situation. Viewing the matter in retrospect officers and members of the Board of Directors admit that the difficulties of May and June 1946, could have been forestalled by stopping trading in futures for each grain as soon as it became evident that supplies of grain for delivery on futures would not be available. It is also probable that had not the precedent been set for settlement of defaults without penalties, nearly a year before, few speculators would have taken the risk of selling short in the face of vanishing supply and pressure to increase ceiling prices.

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CHAPTER III KANSAS CITY BOARD OF TRADE ACTIONS

SECTION 1. BASIC ORGANIZATION AND AUTHORITY

Organization

The Constitution and Rules of the Board of Trade of Kansas City set out in one document both the basic organization and the operating rules of the Board of Trade. According to this document, the Board of Trade is a voluntary association created by mutual agreement and contract among its members. The preamble to the Constitution and Rules, which constitutes the agreement of the members, reads as follows:

> "The persons whose names are hereto subscribed and those who hereafter may be admitted to the privileges resulting from this contract do hereby agree and contract, each with the other, and among themselves, to be bound by and to keep and observed the following Constitution and Rules, as well as such amendments and supplements thereto as may be hereafter adopted in accordance with the provisions hereof, as well as all rules, regulations, orders, and resolutions prescribed, made, or adopted as herein provided and authorized.

The objects of the Association as stated by the Constitution and Rules are:

> "To maintain a Board of Trade; to promote uniformity in the customs and usages of merchants; to inculcate principles of justice and equity in business; to facilitate the speedy adjustment of business disputes; to inspire confidence in the business methods and integrity of the parties hereto; and generally to secure to its members the benefits of cooperation in the furtherance of their legitimate pursuits, and to promote the general welfare of Kansas City."

The actions of the Board of Directors which are taken from time on specific matters such as the regulations which have been issued during the past year to govern futures trading, settlements, etc., are communicated to the members of the Board of Trade through Circulars of the Secretary's Office. Apparently the only forms in which these regulations, many of which are naturally of transitory effect and interest, are preserved are in the minutes and in a master file of the Circulars maintained by the Secretary of the Board of Trade. They are not reported in the annual report of the Board of Trade which includes only statistical matter and lists of members.

Emergency War Powers

In addition to the duties and powers conferred on the Board of Directors to administer the Board of Trade in accordance with the Constitution and Rules and set up such regulations as may be necessary to this end, special War Powers are given under Rule No. 38 (latest Amendment No. 12) which reads as follows:

> "38. WAR POWERS. - The Board of Directors, during the continuance of any war to which the United States shall be a party, shall have the power from time to time thereafter to prohibit, until further action of the Board and notice thereof, trading for present or future delivery in any or all of the commodities traded in on its Exchange, or such trading for delivery in any particular month, including trading in settlement of any then existing future contracts.

Whenever such trading for future delivery shall have been so prohibited, the Board of Directors shall appoint a committee of three from the membership at large, which committee shall fix, as of the day immediately preceding the first day on which such future trading shall have been prohibited, a fair and reasonable price at which existing contracts shall be settled; and the price so established shall, without the payment of any penalty, be the basis on which such settlements of such contracts for future delivery shall be made.

Subject to the provisions of the Commodity Exchange Act, as amended, the Board of Directors, whenever the public welfare, or the best interest of the Association shall in its judgment seem so to require, shall have power to suspend, during the continuance of any war to which the United States shall be a party, the operation of any rule of the Exchange, and also to fix a maximum price for any commodity dealt in on its exchange, above which price no member shall thereafter and during the maintenance of said maximum price be permitted to make a trade in such commodity.

Any action of the Board of Directors under this Rule shall be binding on all members of the Association, from and after the hour when the same shall be posted on the bulletin board in the Exchange room.

Any member making a trade, or refusing to make a settlement, or doing any act in violation of this rule, shall be deemed to have been guilty of a grave offense involving the good name of this Association, and shall be liable to punishment as provided in Rule 152."

The above Rule 38 has been quoted in full because it is cited by the Board of Directors as the authority under which the Board has issued the various regulations which have appeared during the war to govern the trading in grains on the Kansas City Board of Trade. This rule apparently was adopted during World War I. The exact date of its adoption is not known, but it appears in substantially its present form as section 14 under V Duties and Powers of the Board of Directors in the Constitution, Rules and Regulations as revised August 1, 1920.

The first paragraph of the rules gives the Board of Directors wide power over trading on its floor during wartime and makes any action of the Directors taken under it binding upon all members of the association. The penalties provided in Rule 152, cited in the last paragraph as applicable in case of nonconformity to actions taken by the Board of Directors under Rule 38, are censure, fine, suspension, or expulsion at the discretion of the Board of Directors.

SECTION 2. ACTIONS AFFECTING FUTURES TRADING SINCE MAY 1945.

General Market Conditions

The steadily tightening situation as to government price regulation, dwindling visible supply of grain, and government purchase and control of free grain under War Food Order No. 144 affected Kansas City Board of Trade operations in much the same manner as Chicago. These effects have been touched upon in Chapter I and II and need no further treatment here.

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Futures Traded

Contracts for future delivery were traded on the Kansas City Board for wheat, corn and grain sorghums in 1945. Since grain sorghums are not traded on either the Chicago or Minneapolis exchanges they were not made the subject of study at Kansas City.

The following references to the actions of the Board are given in chronological order without respect to the grain involved. As a matter of fact, wheat was the only grain importantly affected by the actions of the Board of Trade during 1946 since no trades or open positions in corn futures were recorded after January 1, 1946.

September, 1945 Sorghum and Corn Trading Restricted to Liquidations

On August 11, 1945 (Circular No. 1776) all trading in September grain sorghums and corn futures was prohibited except for liquidation of existing contracts. The Board did not further specify the grounds for action, nor was there any apparent waiver of responsibility for settlement by the shorts.

May, 1946 Wheat Restricted to Liquidation

No further action with respect to control of grain futures trading was taken in Kansas City until February 18th, 1946 when, under Circular 1811, trading in May wheat was prohibited except for liquidation purposes. This action paralleled that taken by the Minneapolis and Chicago grain exchanges. The Board of Trade in this action cited War Food Order No. 141 with its restrictions on the sale and delivery of wheat as being the reason for issuance of the regulation but it did not invoke the authority given to it under Rule No. 38.

Ceiling Price Increase in March

On March 4, 1946, the Board of Directors issued Circular No. 1820 which, under Rule 38, fixed maximum prices on grains effective on that date as follows:

Wheat	$1.73 5/8 per bushel
Corn	1.18.1/4 per bushel
Grain sorghums	2.55 per 100 pounds

At the same time regulations issued February 27, 1945, May 31, 1945 and June 26, 1945 fixing maximum prices for grains were rescinded. Reference was made in the regulation to the fact that the Office of Price Administration had issued revised price regulations fixing maximum prices for those grains but the wording of the regulation implies that the maximum prices to govern trading are the responsibility of the Board.

Premature Close-out of May Wheat

Trading in May 1946 wheat (previously limited to trading for liquidation under Circular 1811) was prohibited altogether by Circular No. 1829, adopted March 28, 1946, which required that all outstanding May wheat contracts be closed out as of that day. A Committee appointed at the same time under the provisions of Rule 38 to fix a price for the settlement of the existing May wheat contracts reported that the fair and reasonable settlement price should be $1.73 5/8 per bushel, the ceiling as of that date, and that the contracts should be settled without penalty. The report was incorporated in the regulation and settlement ordered in accordance with the findings of the Committee.

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The open interest in May wheat at the close of business March 27th stood at 2,850,000 bushels. The trading volume on March 28th was 2,696,000 bushels leaving only 154,000 bushels in default. This likewise was closed out at the prevailing ceiling of $1.73 5/8 per bushel. Netting out the long and short positions held by each of the clearing members as of March 27th shows a net long position of 2,413,000 bushels and a net short position of 2,443,000 bushels. The important long positions were held by Continental Grain Co. and Uhlmann Grain Co. with a total of 2,245,000 bushels out of the net long position of 2,413,000 bushels. Four other grain companies accounted for 1,678,000 bushels of the short position. It was apparently easy, therefore, to bring the situation into balance with a minimum amount of difficulty. The statistical record also appears to confirm the statement by the Secretary of the Board of Trade that - at least so far as the May wheat close-out was concerned - the members cooperated satisfactorily in adjusting their respective positions by negotiations bringing about settlements.

Trading was opened in an entirely new wheat contract for May 1947 on April 30, 1946 with 25,000 bushels. The open position, all in one firm, reached 90,000 bushels by May 3rd at which point it remained until closed out May 22nd.

Trading in other old wheat futures almost stopped following the close-out of May wheat on March 28th, but there was some reduction in the open interest by trading. The total open for July, September, and December 1946 and May 1947 futures fell from 4,900,000 bushels as of April 1st to 4,199,000 bushels at the market close May 11th. Of this amount, 2,603,000 was in July wheat, 980,000 in September and 526,000 bushels in December and 90,000 bushels May 1947 wheat.

Trading in all old Contracts Restricted to Liquidation

Following the meeting of the Officers of the Kansas City Board of Trade with the heads of Chicago and Minneapolis commodity exchanges in Chicago at which the May 8 request and recommendation of the three Government agencies was discussed with a representative of those agencies, a special meeting of the Board of Directors of the Kansas City Board of Trade was held and resolutions were adopted in line with the action taken by the Chicago Board of Trade restricting trading in all outstanding old grain futures to liquidating trades and ordering settlement at the old ceiling prices applicable May 11, 1946. Two orders were issued, both dated May 13, 1946. One as Circular 1854, which was very brief, apparently was considered inadequate and was immediately followed by Circular No. 1855 which cited specifically the three agency request and recommendation, gave more complete explanation as to the reason for the action, and invoked the powers conferred on the Directors by Rule 38 but otherwise was of the same tenor as Circular 1854.

The trading volume for May 13, and 14 totaled 680,000 bushels, reducing the open interest, to a total (open interest) of 3,519,000 bushels of which 2,003,000 bushels was in nearby July wheat. Thereafter the trading volume was insignificant. Some idea of the supply situation as of that period may be gleaned from the reports of the amount of contract grades of wheat in regular warehouses as of the following dates:

Since an unknown but reportedly very large percentage of the wheat noted above was owned by the Government after the issuance of War Food Order No. 144 it is apparent that throughout the period from early March to the end of June the supply situation in the Kansas City market was extremely critical. Short traders obviously were frozen in the positions held May 11th except for the relatively small amount of trading for liquidation immediately following the issuance of the May 13th order.

May 13 Ceiling Price Increase

The Board of Trade, following its action of May 13th, fixed under Circular No. 1859, dated May 18, 1946 and effective May 20, 1946, maximum prices for wheat, corn, and grain sorghums for future delivery under new contracts in accordance with the OPA ceilings as follows:

Wheat	$1.88 5/8 per bushel for delivery in August and November 1946 and March 1947
Corn	$1.43 1/4 per bushel for delivery in January and March 1947
Grain Sorghums	$2.73 per 100 lbs for delivery in November 1946 and January and March 1947

Another circular, No. 1860 specifying margin requirements for the new contracts was issued the same day, May 18th. There was no record of any trading in the new contracts in the Commodity Exchange Authority reports.

Restriction of all Trading to Liquidation

The Board of Directors took action June 4, 1946 (reported in Circular No. 1869, June 5th, effective that day) first, to purge themselves and the Board of Trade of a possible claim that they had fixed prices in various orders issued in the past by modifying and amending their orders of May 12, 1946 and May 18, 1946 to order that

> "all contracts for future delivery of grain made on and after June 5, 1946, shall be made at or under ceiling prices now in force or hereafter established from time to time by the United States Government through its agencies so long as ceiling prices are maintained in force by the United States Government, and further . . . all maximum prices heretofore fixed by the Board of Directors shall cease to be effective."

and, secondly, to continue in force the provision of the resolution of May 12th (Circular No. 1855, May 13, 1946) limiting trading . . . the old futures to settlement of existing contracts and, further, to prohibit trading except for settlement of contracts in the "new" futures. This, in effect, limited all trading to liquidation of futures already outstanding.

Premature Close-out of all Futures Outstanding

Fairly active trading followed the issuance of Circular 1869 on June 5th. The total volume of 3,269,000 bushels open June 5 was reduced to 2,589,000 bushels at the close of business June 13, 1946. Most of the liquidation was in July wheat.

On June 13, 1946, the Board of Directors issued Circular 1870 closing out all grain futures as of that date and appointing a committee to determine a fair and reasonable price at which existing contracts should be settled without payment of any penalty. A public hearing before the Committee was set for June 17, 1946.

Settling prices for the closed out futures recommended by the Committee and adopted by the Board were:

$1.88 5/8 per bushel for wheat;
1.43 1/4 per bushel for corn;
2.73 per 100 pounds for grain sorghums;

and June 19, 1946 was set as the settlement date.

The largest single short interest in July wheat was 360,000 bushels held by the Rocky Mountain Grain Co. and the largest single long interest, 570,000 bushels held by Continental Grain Co. Uhlmann Grain Co. had net long interest of 175,000 bushels. The only processor with a reported open interest was Ralston-Purina Co. with contracts on the short side of 120,000 bushels of September and 100,000 bushels of December wheat.

The Secretary of the Kansas City Board stated that no serious difficulties were met in arranging settlements between the short and long interest, also that there were no serious complaints against the action of the Board although many felt that trading probably should have been stopped long before it became necessary to take action in May, and that, as a matter of fact, the advent of WFO 144 should have provided the signal for closing out all trading when it then could have been done in a perfectly normal manner and with exaction of only minor penalties. It is probable that had not a precedent been set for settlement without penalties, few would have taken a chance on selling short in the face of the well known facts of a vanishing supply and the pressure to increase ceilings. The gratuitous destruction of the responsibility of the individual trader to stand by his contract through waiver by the Board of Trade of any penalties for incorrect appraisal of the market was the most serious aspect of the actions taken by the Kansas City Board of Trade.

Resumption of Trading in Wheat

Following the close-out of June 13, there was no trading in any grain futures on the Kansas City Board until the Board by Circular No. 1896 August 3, declared that, whereas emergency conditions requiring the close-out had materially changed and the public welfare and interests of the association would best be served by permitting trading in new contracts for future delivery of wheat in September and December, 1946 and March, 1947, trading in these futures was reopened on Monday August 5, subject to rules of the association and applicable government regulations.

Resume of General Effects

The Kansas City Board of Trade faced a situation quite similar to that of the Chicago Board of Trade so far as wheat was concerned, but had no problem respecting corn, oats, rye, or barley as did the Chicago Board. The Kansas City Board's

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volume of trading in wheat was much smaller, and nation-wide and even international speculative interests were less important. The fact that trading interests were more largely local undoubtedly made it easier to arrange liquidating trades and close-outs through more democratic and personal give and take in making arrangements to enable frozen-in short interests to close-out their positions.

The Kansas City Board of Trade followed a somewhat less vacillating course than that of the Chicago Board of Trade. It did reverse itself to the extent that on May 13, it ordered liquidation of all outstanding futures at the old ceiling while on June 5 it made the new ceiling applicable in the liquidation of all futures still open. This second action was taken after the Cargill and Buckley cases had been filed against the Chicago Board of Trade.

Paralleling the action of the Chicago Board of Trade, that of the Kansas City Board of Trade on May 13 protected shorts at the expense of longs, while that of June 5 making the new ceilings applicable in the liquidation of all trades still outstanding, shifted the burden of the May 13 ceiling price back to shorts who were still in open position, and correspondingly benefitted longs. This second action again paralleled action by the Chicago Board of Trade, as did its third action closing out all contracts as of June 13 in anticipation of the expiration of price controls on June 30. Likewise, the action of the Kansas city Board on March 28, closing out all May wheat contracts prematurely, paralleled actions already taken by the Chicago and Minneapolis exchanges.

The amounts involved, and the incidence of windfall losses and gains resulting from the March 4 and May 13 ceiling price increases as distributed by regulations of the Kansas City Board of Trade, may be summarized as shown in Table 11.

TABLE 11. TOTAL WHEAT CONTRACTS CLOSED OUT BY ORDERS OF KANSAS CITY BOARD OF TRADE MARCH 28 - JUNE 13, 1946

	Total closed out		Traded out at old ceiling price		Closed June 5-13 at New Ceiling	
	Bushels	Amount involved at 15 cents per bushel	Bushels	Saving [illegible] at 15 cents per bushel	Bushels	Profit to longs at 15 cents per bushel
May 13 - June 13 liquidations						
July	[illegible]	$[illegible]	615,000	$ [illegible]	[illegible]	$298,200
September	[illegible]	147,000	210,000	[illegible]	[illegible]	115,500
December	526,000	78,900	15,000	2,250	511,000	76,650
May 1947	[illegible]	[illegible]	[illegible]	[illegible]	--	--
Total open May 13	4,199,000	$629,850	930,000	$139,500	3,269,000	$490,350
May, 1946 wheat closed out March March 28	2,850,000	85,500 1/	--	--	2,850,000	85,500 1/
Total contracts closed out	7,049,000	$715,350	930,000	$139,500	6,119,000	$575,850
Percentage distribution of profits and losses		100.0		19.5		80.5

1/ At 3 cents per bushel representing amount of March 4 ceiling price increase

Had the May 13 order closing out all outstanding wheat contracts stood unchanged, the total of the windfall profit of 15 cents per bushel arising out of the May 13 ceiling price increase would have accrued as savings to shorts on the total of 4,199,000 bushels of contracts open on May 11. The order of June 5 making the new ceiling price effective for further liquidation shifted the financial responsibility back upon the shorts to the benefit of the longs. The net result was that shorts benefitted only to the extent of $139,500, or 19.5 percent of the total windfall profits arising out of ceiling price increases.

The March 28 order closing out May wheat at ceiling gave longs the benefit of the ceiling price increase of 3 cents per bushel effective on March 4. On 2,850,000 bushels of contracts closed out this amounted to $85,500. In additon, making the May 13 ceiling price increase applicable in liquidating trades after June 5 and in the final close-out of all open contracts on June 13 gave longs an additional profit of $490,350, making a total of $575,850 of protection given to long interests whose contracts were liquidated. Longs in the end benefitted to the extent of 80.5 percent of the total windfall profits and losses involved.

Shorts, however, could count some additional protection to their interests since the close-out as of June 13 relieved them of any financial responsibility arising out of price increases after July 1. Cash wheat moved sharply upward in price after July 1, then sagged to near the May 13 ceiling price at the end of the month, and averaged some 5 or 6 cents higher than ceiling for the month, and September showed a somewhat similar average advance over the May 13 ceiling price. Additional savings to shorts on July and September futures which constituted the bulk of contracts open, might have been of like order per bushel.

Thus the actions of the Chicago and Kansas City Boards followed the same pattern and had similar effects in distributing windfall profits and losses. The Kansas City Board, however, acted under its Rule 38 which deals specifically with war powers. The question as to whether these powers might lawfully be used in 1946 with no actual hostilities in progress, but with the Exchange still operating under unusual conditions imposed by Government actions under war powers, has not been questioned in any formal action

In retrospect, the secretary of the Kansas City Board of Trade has expressed the opinion that trading should have been stopped long before May 13. It was then too late, however, to correct the situation with either ease or equity. For months trading had been permitted in futures purporting to be contracts for grain when in fact grain did not exist, or could not be made available for the satisfaction of futures. In fact it would appear that the predominantly short speculative side of the market sold at ceiling with little intent of trying to supply grain so long as defaults were settled at ceiling. The validity of future contracts was thereby undermined to the point where the statement often made that every futures contract is a contract for grain had become mere fiction. This undermining of the integrity of futures is one of the most serious effects arising out of the exchange managements failure either to stop trading at a much earlier date, or to hold traders more strictly to the fulfilment of the terms of contracts. Responsibility for not protecting the validity of contracts under present conditions of law and exchange management rests entirely with the officers and directors of each commodity exchange.

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CHAPTER IV. MINNEAPOLIS CHAMBER OF COMMERCE ACTIONS

SECTION 1. ORGANIZATION AND POWERS

Organization and Purposes

The Chamber of Commerce of Minneapolis was set up as a corporation under the laws of the State of Minnesota by a group of 20 citizens who adopted Articles of Incorporation on October 6, 1881, which were filed with the Secretary of State on October 19, 1881. The Corporation's first meeting for the adoption of by-laws, rules and regulations was held on November 15, 1881. The organization has had continuous corporate existence since that time.

The general objects and purposes of the corporation, as stated in its Articles of Incorporation are:

> "To facilitate the buying and selling of all products, to inculcate principles of justice and equity in trade, to facilitate speedy adjustments of business disputes, to acquire and disseminate valuable commercial information, and, generally to secure to its members the benefits of cooperation in the furtherance of their legitimate business pursuits, and to advance the general prosperity and business interests of the city of Minneapolis."

Powers Respecting Trading

Rule 418 provides that the Board of Directors shall have power to fix the hours of trading, to declare any day a holiday, and:

"When in the opinion of the Board of Directors an emergency exists, the Board shall have power from time to time to

(a) Close the Exchange;

(b) Suspend trading in any or all Futures Contracts, including trading in and settlement of any then existing Futures Contracts;

(c) Prohibit trading during any day in any or all Futures Contracts at prices more than a specified limit above or below the average closing prices of the preceding business day;

(d) Prohibit trading in any or all Futures Contracts at prices above or below such limits as are specified by the Board;

(e) Limit the total amount of open speculative Futures trades which any member or any Registered Firm or Corporation, or any customers of any such member, Firm or Corporation may have at any one time in any or all commodities, and to increase or decrease or cancel such limitations as the Board of Directors deems advisable. The Board of Directors may require such reports and may make such Regulations as it deems necessary to enforce such limitations. Provided, however, that the establishing of any such limit shall not be deemed to require that total amounts of such trades acquired before the effective date of such limitations be reduced to such limit; adopt regulations to conform with orders recommendations or requests of any duly constituted governmental authority, or which in the opinion of the Board of Directors may be necessary or appropriate.

"If and when the Board of Directors has acted under authority granted by this Rule, it may make such regulations in regard to settlement prices in connection with Cash or Futures Contracts affected thereby as the Board deems necessary and proper for the best interests of all concerned."

* * * *

"Any Member, or any Registered Firm or Corporation, who or which (after hearing) has been found to have violated any of the provisions of this rule or any order of the Board of Directors issued pursuant thereto, shall be deemed and held to be guilty of uncommercial conduct and of committing a grave offense against the good name of this Association."

"Uncommercial Conduct" and violations of the Rules, Regulations, customs or usages of the Association are subject under General Rules 800 and 810 to punishment by fine, censure, suspension or expulsion, or by two or more of such penalties as the Board of Directors (after hearing) may determine is warranted by the nature and gravity of the offense found to have been committed. The Board of Directors thus has broad powers to regulate trading and enforce its regulations against those permitted to trade on its floor.

SECTION 2. ACTIONS RESTRICTING FUTURES TRADING AFTER JANUARY 1, 1946

Futures Traded

During the period from January to June 1946, futures trading in the principal grains in Minneapolis was confined to wheat and oats for delivery in the months of May, July, September and December 1946, and rye for the month of May, 1946. There was no trading whatever in corn or barley futures.

General Market Conditions

The general market situation as to supply was similar to that described in detail for the Chicago market and need not be repeated here.

The situation in Minneapolis, like that in Kansas City, normally differs from that in Chicago in that the total volume of trading is smaller, speculative interests are much less important, and trading is largely for hedging purposes, it is claimed that effective trading for hedging purposes even in normal times often would be improved if a larger speculative interest were present to broaden the market and make easier the placing and lifting of hedges. On the other hand, Minneapolis claims to be the largest cash grain market in the world, handling from 300 to 500 million bushels over its cash tables annually.

May and July Wheat Trading for Liquidation Only

The first important regulation affecting futures trading during the first six months of 1946 was adopted on February 18, 1946. On that date the Board of Directors, citing War Food Order No. 144, and acting under the authority of Rule 418, ordered that effective on the opening of the market on February 18, and continuing until further notice, trading in futures for delivery of wheat in May and July 1946, would be limited to transactions for the liquidation of outstanding open contracts. This regulation continued in effect to the termination of the July contract.47/

March 4 Ceiling Price Increase

On March 4th the Board of Directors adopted and published as Circular 3844 a regulation increasing Minneapolis ceiling prices by 3 cents per bushel for wheat,

47/ Chamber of Commerce of Minneapolis, Circular No. 3843, March 1, 1946.

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3 cents for corn, 4 cents for barley and 2 cents for oats. These increases were in accordance with OPA price increases.

Intra-Market and Inter-Market Spreading

On March 6, the Board of Directors adopted and published as Circular No. 3845, a regulation which permitted intra-market spreading between two grains, both being at ceiling prices, and inter-market spreading between Minneapolis and another market in the same grain, or between two different grains, when at ceiling prices in both markets, provided that such intra-market and inter-market spreading transactions be offered at public outcry and executed in the pit, and that such spreading transactions be limited to transactions to effect the liquidation of outstanding contracts. No new commitments were to be made.

Premature Close-out of May Wheat

On March 12 the Board of Directors adopted and published as Circular No. 3847, a regulation requiring all futures contracts for delivery of wheat in May 1946 still in effect at the opening of the market on March 13 to be liquidated by settlement with the clearing Association at the maximum (ceiling) price for futures for wheat in effect at the time of settlement. May wheat had been at ceiling continuously since January 1, 1946.

This action closing out May wheat prematurely antedated the action of the Chicago and Kansas City close-outs of May wheat by about two weeks. It also was the only such action taken by the Minneapolis Chamber of Commerce.

May 13 Ceiling Price Increases

On May 12th a regulation putting into effect the new ceiling prices effective May 13 was published as Circular 3850. This regulation specifically cited the ceiling increases as having been ordered by the United States Government under its war prices, and therefore having the effect of law. The new prices were to apply to old contracts. No new contracts were authorized for trading. All futures then being traded were free to move to the new price ceilings subject to the requirement that the maximum increase in price in any one day was limited to 5 cents per bushel. All wheat futures and nearby months of oats promptly moved to the new ceilings by 5 cent daily advances.

At this time the futures affected which were being traded in Minneapolis were July wheat (for liquidation only), September and December wheat and May, July, September and December oats. May rye was also being traded but it was not under ceiling price.

Trading in all Wheat Contracts Restricted to Liquidation

On June 13, the date on which the Chicago and Kansas City exchange closed out the bulk of old contracts outstanding, along with some new ones, the Minneapolis Chamber of Commerce adopted a regulation effective at the close of the market June 13, which, until further notice, prohibited trading in wheat futures for delivery in July, September and December 1946, except for liquidation, and prohibited altogether, trading in any contracts for corn, rye, barley and flaxseed.

This regulation is to be contrasted with those of the Chicago and Kansas City exchanges which prematurely closed out large volumes of open contracts altogether. The Minneapolis regulation left it to the owners of outstanding contracts to liquidate

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them to their own best advantage. Thus the full responsibility of traders for their respective positions was preserved and the integrity of th contracts was protected, or at least made a matter of negotiation between the parties themselves.

Removal of Ceiling Prices

On June 30, the Minneapolis Board, by regulation, rescinded all of its regulations establishing maximum prices, service charges and mark-ups issued in compliance with maximum prices, service charges and mark-ups established by the Office of Price Administration. The Board left in effect its regulation of June 13 restricting trading in July and September wheat to liquidation, and added specific prohibition until further notice against trading in oats contracts for delivery in months subsequent to December, 1946. This left only July, September and December oats to be traded without restriction.

Resumption of Trading in Wheat

On July 30, the Board of Directors adopted a regulation which recited that whereas paragraph (M) of War Food Order No. 144, requiring the offering of excess wheat to the Government, had been suspended thereby again making it possible to accumulate and control wheat for delivery on futures, and whereas, country shippers had appealed to the exchange to reestablish futures trading in wheat as a means of enabling them to purchase wheat from farmers, thereby reducing the hazard of loss through price fluct[illegible]ns and permitting them to market the farmer's wheat at the lowest possible cost to him, open trading in September and December wheat was again authorized. The prohibition of June 13 against trading in corn, rye, barley and flaxseed futures remained in effect. This marked the first step of the Minneapolis Board of Trade to resume open trading in any grain other than oats. The Board obviously was proceeding slowly and conservatively in reestablishing trading in futures.

SECTION 3. ECONOMIC EFFECTS

Premature Closing Out of May Wheat

As already noted, the only contract prematurely closed out by the Chamber of Commerce of Minneapolis was May wheat, which was restricted to trading for liquidation as soon as War Food Order No. 144 became effective on February 18, and was closed out altogether on March 13, shortly after the March 4 increase in ceiling price of 3 cents per bushel had become effective.

No special difficulty appears to have been experienced in the settlement of May wheat contracts on March 13. Longs got the benefit of the 3 cent ceiling price increase of March 4 at the expense of shorts, who, for their 3 cents per bushel, were relieved of the responsibility to deliver wheat in May which War Food Order No. 144 made it impossible for them to own for more than a week at a time. At this time the short hedging interest of processors had largely disappeared from the Minneapolis market for the reason that, with wheat at ceiling for months, there was no point in selling futures against existing small stocks of wheat which, after being used up, would no longer be available for the satisfaction of hedges that could not readily be lifted. To merchandisers and processors, hedging on the long side of the market was also of questionable value for the reason that if wheat was received (which was unlikely so long as War Food Order No. 144 was in effect) it might have to be offered to the Government. Nobody yet knew anything about the May 13, ceiling price increase so neither potential injury nor benefit could be counted against it.

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The questions of failure to maintain the integrity of contracts and of assumption by the Chamber of Commerce of responsibility for cutting across private contracts and fixing profits and losses thereunder, however, were raised, and a consensus of opinion arrived at among the management that the action taken was not economically sound or wholly equitable and might even lead to legal difficulties. Such attitude is in line with the spirit of the Chamber's rules which include failure on the part of a member to comply with any contract either oral or written which is governed by or made subject to the rules of the Association one of the acts included in the definition of "Uncommercial Conduct."48/ The logic of the conclusion appears to have been that if it is commercially objectionable for members arbitrarily to set aside contracts, it would be equally objectionable for the Chamber of Commerce to do so. This opinion, it will be noted, was arrived at after, and as a consequence of hurried action prematurely closing out May wheat contracts on March 13.

Refusal to Follow the May 8 Request and Recommendation

The attitude discussed in the last paragraph became evident at and following the joint conference of representatives of the Chicago, Kansas City and Minneapolis exchange with a Government representative in Chicago on May 11. At and after that Conference the representatives of the Minneapolis Chamber of Commerce strongly advised against following the Government request and recommendation. They so wired the Chicago Board of Trade on May 12 and themselves refused to take the responsibility of closing out futures. Instead, they merely ordered the new ceilings into effect on May 13 and continued in effect their action of February 18 restricting trading in July wheat to trades for liquidation only. This merely continued trading under restrictions already in effect, but at the new ceilings for both wheat and oats.

The same attitude was taken a month later when, instead of closing out wheat futures altogether, as was done by Chicago and Kansas City, Minneapolis merely extended its restriction of trading in wheat to trades for liquidation of all wheat contracts outstanding, namely, July, September and December, 1946. This, likewise, was the only restriction applied to trading in contracts outstanding when price controls expired on June 30.

Method of Settling Maturing Contracts

The method pursued by Minneapolis in bringing about settlements of nearby month futures from March onward was that, under the general direction of the Exchanges' Business Conduct Committee, effort was made to maintain the validity of contracts and thereby protect the interests, especially of long hedgers, who constituted the bulk of the long open interest, while giving shorts every reasonable opportunity to work out an agreed upon settlement with longs so that there would be no defaults at maturity of the contract.

An example might be as follows: A trader short of a future and unable either to buy in his position or purchase and hold grain to the delivery month might, however, be able to purchase a "to arrive" contract. With this in hand he could thereupon arrange with some miller or processor long of the future and standing for delivery to trade his long position for the to arrive contract. Or if he could obtain cash grain and retain ownership for only a few days he could make a similar bargin. The Business Conduct Committee worked with both shorts and longs to bring about settlements.

48/ See General Rule 801 of The Chamber of Commerce of Minneapolis

Most open positions were stated to have been liquidated in this manner, and the balance were settled by special arrangements for cash settlements made directly between longs and shorts so that, technically, there were no actual defaults upon which the Board of Trade was required to take formal action.49/

To do this, the customary rule requiring delivery of grain in warehouses in Minneapolis was waived to the extent necessary, and the clearing Association approved special arrangements satisfactory to both parties in clearing the open trades involved, even though customary rules and procedures were not always fully complied with. The greatest difficulty experienced was stated to have been to get speculators who were long to give up their positions in exchange for to arrive contracts.

Success of the emergency efforts made to maintain the integrity of contracts and avoid wholesale freeing of shorts from responsibility, or of definitely determining that responsibility, was undoubtedly facilitated by the predominance of long hedges in the market. Success was undoubtedly facilitated further by the fact that the total volume of open interest was limited and there was relatively little speculative interest, either long or short, located at such distance as to make negotiation of settlements difficult. Still another factor was the absence in Minneapolis of large open short interests in Corn, short speculation in which had been fostered rather than retarded in Chicago by past closeouts of defaults without penalty other than the assessment of ceiling prices even after it became well known that much of the limited supply of deliverable or other grades of corn was being marketed through "Irregular" channels with the result that little was available in customary channels even before the Government began paying a premium for corn. All these factors appear to have favored what the Secretary of the Minneapolis Chamber of Commerce described as planned cooperation on the part of longs to hold off, and on the part of shorts to make arrangements to obtain grain from any source available for submission in satisfaction of futures.

Effect on Hedging and Speculative Interests

From January 1946 to the beginning of the movement of the new crops in volume in July and August, the sale of futures as hedges against stocks of grain in the hands of merchants and processors was of little value. Not only was the price trend upward, making hedging protection unnecessary on stocks of grain owned, but the narrowness of the futures market, due to the fact that there was little speculative interest on the long side of the market so long as futures remained at ceilings, made the lifting of short hedges difficult. Short hedges remaining open after grain was sold or consumed became a financial hazard rather than an insurance against price change. The short hedger, along with the speculative trader, was quite effectively frozen in an open short position the hazard of which grew as time went on.

The upward trend in prices, however, made long hedges bought against forward commitments for grain or grain products become valuable both to merchants and processors, and only to a less extent to speculators with open long interests.

The actions taken by the Minneapolis Chamber of Commerce and insistence that both longs and shorts assist in working out the most equitable settlements possible had the effect of protecting the interests of both to some extent by what amounted practically to renegotiating and mutually readjusting their claims one upon the other. Shorts took losses and longs counted gains, as all futures trading contemplates. In this case the losses and gains were mutually agreed upon between the parties rather

49/ It appears that in some instances what amounted practically to "rings" were formed by several interested parties whereby a single warehouse receipt or to arrive Contract might be passed from one interest to another, especially where speculators were in long positions, thus satisfying in whole or in part several different long and short positions, much as a negotiable check or currency might be passed from hand to hand.

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than for both parties to sit back and wait for someone else to determine their respective rights and responsibilities. The Minneapolis Chamber record, proudly cited by its management, of few, if any, defaults in its history requiring formal determination by the Exchange was preserved.

Effect on Farm Prices

Wheat and oats were the only two grains for which futures were importantly traded on the Minneapolis market during the first six months of 1946. Of these two, oats were in fairly plentiful supply, while wheat was in short supply. The prices of oats futures tended to adhere to ceilings only for nearby old-crop months as they approached maturity, while the prices of all wheat futures traded adhered quite firmly to ceilings from the middle of January onward.

Trading in oats futures was not restricted at any time on the Minneapolis Exchange. To the extent, therefore, that prices of nearby month futures tended to adhere to ceilings and to the extent that futures prices were used as the basis for country buying, they would tend to keep the prices bid to farmers at ceiling for any oats still remaining on the farm. Also the fact that oats futures served fairly well as hedges up to the time they became frozen at ceiling, enabled merchants to handle oats at minimum margins no greater than those fixed by the Office of Price Administration.

For wheat, the situation was somewhat different. Here shortage of supply of itself probably would have caused cash prices to press hard against ceilings. The fact that futures likewise adhered to ceilings merely strengthened the cash price in the country. However, with futures adhering steadily to ceilings, shorts were frozen in their open positions by the refusal of longs to trade on an upward trending market. This caused losses to hedgers who found themselves unable to lift short hedges except at increased prices long after wheat hedged had been disposed of. This could have little, if any, effect on prices realized by farmers so long as the supply situation kept cash prices frozen to ceiling anyway.

This situation, however, was entirely changed after July 1. When prices went up with no nearby futures open for new trades, the burden of risk in buying and storing grain then fell upon country buyers, terminal elevators and processors. Until the price advance reached its peak and the new crop began to move in volume, hand to mouth buying all along the line enabled all factors to avoid undue risks. As soon, however, as new crop movement got under way, the only course open to merchants, in the absence of hedging facilities, was to bid less in the country in order to widen their margins. This was necessary because with merchants feeling that the price increase had reached its peak, there would be no opportunity to increase margins by selling at higher prices in terminal markets or elsewhere.

Under these circumstances, with no futures available for new hedges, shortage of cars caused highpriced wheat to pile up in country elevators during July. To offer some measure of relief, the Minneapolis Chamber of Commerce reopened trading in September and December wheat futures on July 30. Since the general market feeling was uncertain and bearish, no long interest appeared to take the short hedges. Consequently, as late as the middle of August, Minneapolis cash commission merchants were advising their country elevator clients not to buy outright but only to accept and store wheat for the farmer subject to pricing later. This meant that the entire risk of carrying wheat at least until August 20th when it would be known whether price controls would be reestablished, and possibly for a longer period if they were not, was shifted entirely to the farmer. Thus the country merchant either underbid the market to provide himself a wider margin than usual or shifted the entire burden to the farmer.

This situation, however, is not to be ascribed to any action taken, or lack of action taken, by the Minneapolis Chamber of Commerce, or any other exchange. It was the natural product of conditions beyond their control, of which uncertainty as to what would happen on August 20 respecting government price controls was at the immediate moment the most important.

Effect on the Prestige and Welfare of the Association

The difference between what happened in Minneapolis and in Chicago lies essentially in the difference in attitude shown respecting the maintenance of the integrity of contracts and the personal responsibilities of traders thereunder. In Chicago, the Board of Trade assumed responsibility, on May 12, at the request and recommendation of Government agencies, to fix prices and thereby determine profits and losses. This applied both to actions taken in May and in the final premature closing out of specified contracts in June. By these actions neither the integrity of contracts, nor the responsibilities of contracting parties were preserved. The prestige of the Chicago market suffered heavily and the exchange laid itself open to legal attack by aggrieved parties.

By contrast, the Minneapolis Chamber of Commerce deliberately chose to maintain the validity of its contracts so far as possible and to insist that its traders, both speculators and hedgers, cooperate and participate in mutual settlements whereby the interests of all parties would be safeguarded so far as equitably possible under the circumstances over which neither the traders nor the Chamber of Commerce had control. Officers and directors of the Minneapolis Chamber of Commerce stated it to be their belief that the actions taken to protect the validity of contracts, preserve the responsibilities of traders and avoid the responsibility for determining profits and losses throughout the difficult period from May through July 1946, were economically and legally sound in principle, and conducive to the prestige and welfare of their Association.

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APPENDIX

GRAIN IN DELIVERABLE POSITION IN FEDERALLY LICENSED WAREHOUSES IN CHICAGO—FIRST 6 MONTHS OF EACH YEAR, 1943-1946

Stocks of grain in deliverable position in federally licensed warehouses in Chicago at the end of each week are compiled by the United States Department of Agriculture. Since about seven-eighths of all grain elevator space regular for futures delivery in Chicago is federally licensed, the quantity of grain in deliverable position in federally licensed warehouses gives a fair indication of how much grain is immediately available for delivery on futures contracts at the end of each week.

The quantities of wheat, corn, oats, rye, and barley of deliverable and nondeliverable grades in deliverable position in federally licensed warehouses in Chicago at the end of each week during the first six months of each of the four years 1943 through 1946 constitute the subject matter of Appendix Tables 1 to 5 and correspondingly numbered Appendix Charts. For wheat, the statistics available subdivide the total quantities in store to show deliverable grades, nondeliverable grades, and ungraded grain. While for corn, oats, rye, and barley, the segregations covers only deliverable and nondeliverable grades.

Wheat

Appendix Chart 1 and Table 1 present comparisons of quantities of deliverable grades of wheat in deliverable position in federally licensed warehouses in Chicago on corresponding week ends of the first six months of each year, 1943 through 1946.

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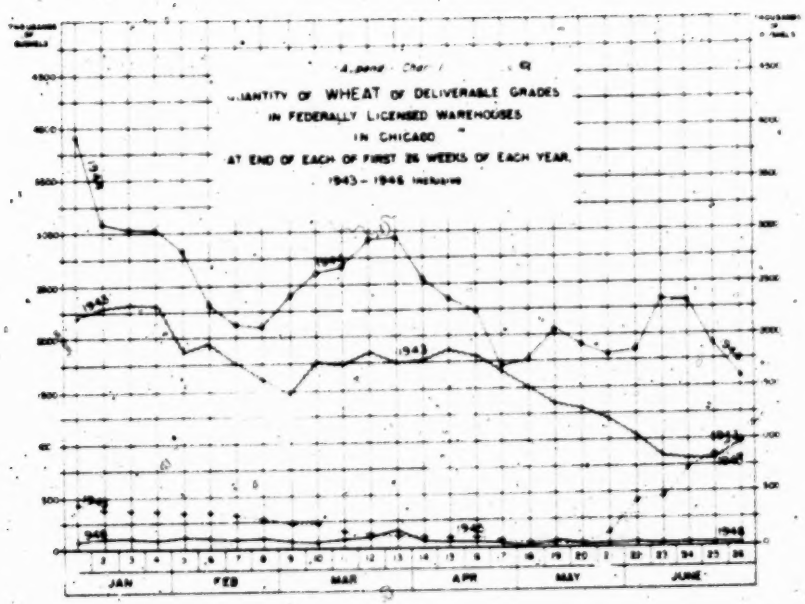
QUANTITY OF WHEAT OF DELIVERABLE GRADES
IN FEDERALLY LICENSED WAREHOUSES
IN CHICAGO
AT END OF EACH OF FIRST 26 WEEKS OF EACH YEAR
1943 - 1946 Inclusive
1946
1945
1944
1943
JAN
FEB
MAR
APR
MAY
JUNE

[fol. 647]

SPECIAL EXHIBIT 1 — WHEAT IN DELIVERABLE POSITION IN PRIVATE WAREHOUSES IN CHICAGO - FIRST 6 MONTHS 1946, 1945, 1944 and 1943
(SOURCE: FOOD DISTRIBUTION ADMINISTRATION, COMPLIANCE DIVISION, CHICAGO, ILLINOIS)

Week Ending	Deliverable Grades (Bushels)				Nondeliverable Grades (Bushels)				Ungraded (Bushels)				Total [illegible] Private Warehouses Bushels			
	1946	1945	1944	1943	1946	1945	1944	1943	1946	1945	1944	1943	1946	1945	1944	1943
Jan. 5	88,[illegible]	[illegible],559	[illegible],854,[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]
Jan. 12	91,[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]
Jan. 19	[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]
Jan. 26	[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]
Feb. 2	[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]
Feb. 9	99,[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]
Feb. 16	90,[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]
Feb. 23	89,[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]
March 2	[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]
March 9	[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]
March 16	[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]
March 23	[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]
March 30	[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]
April 6	[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]
April 13	[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]
April 20	[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]
April 27	[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]
May 4	[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]
May 11	[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]
May 18	[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]
May 25	[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]
June 1	[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]
June 8	[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]
June 15	14,957	741,958	[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]
June 22	9,[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]
June 29	[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]	[illegible],[illegible],[illegible]

The striking showing of Chart I is that stocks of deliverable grades of wheat in Chicago in federally licensed warehouses, (most of which may be assumed to have been in deliverable position since most federally licensed warehouses are also regular for futures delivery) was very small throughout the first five months of both 1945 and 1946 as compared with the quantities of such grades in store in such warehouses in 1943 and 1944. Only in June 1945 was there a showing of increased quantity in store, while June 1946 brought no increase in the total of such grades in store. Furthermore, as shown in Table 1, there were only relatively small quantities of either nondeliverable grades or ungraded wheat in such warehouses out of which deliverable grades might have been made by mixing and transfer to regular store in May and June of 1946.

Wheat of deliverable grades in such warehouses normally constitutes the principal source of wheat available for the satisfaction of futures contracts not liquidated by the normal method of trading. From the showing it is obvious that the quantity available for the satisfaction of futures was dangerously low both in 1945 and 1946. For instance, on March 30, 1946, three days after 9,492,000 bushels of May wheat contracts were prematurely closed out by order of the Chicago Board of Trade, there were only 140,281 bushels of deliverable grades in store in these warehouses. This was the largest quantity of deliverable wheat in store at any time during the first half of 1946. It represented only a little more than 1 percent of the total of May contracts outstanding. And to make matters worse, this wheat could not be held in store for possible satisfaction of May futures for the reason that it was subject to Government disposition under the terms of War Food Order No. 144. Thus, while the total in store was not greatly lower than that shown for 1944, the supply for delivery on futures was, in fact, much tighter than it had been one year before.

Corn

Appendix Chart 2 and Table 2 make similar comparisons of quantities of deliverable grades of corn in store in federally licensed warehouses during the first half of each of the years 1943 to 1946 inclusive.

[fol. 649]

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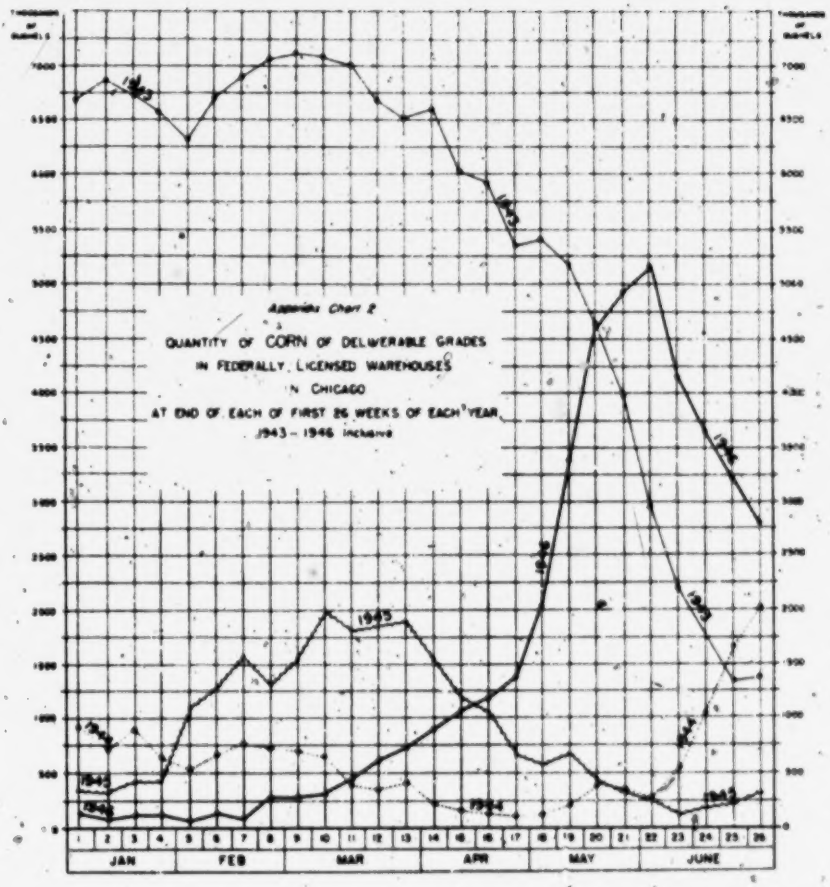
Appellee's Chart 2
QUANTITY OF CORN OF DELIVERABLE GRADES
IN FEDERALLY LICENSED WAREHOUSES
IN CHICAGO
AT END OF EACH OF FIRST 26 WEEKS OF EACH YEAR
1943 - 1946 inclusive
1943
1944
1945
1946
JAN
FEB
MAR
APR
MAY
JUNE

APPENDIX TABLE II

CORN - IN DELIVERABLE POSITION IN FEDERAL WAREHOUSES IN CHICAGO - FIRST 8 MONTHS, 1946, 1945, 1944 AND 1943

Week Ending	Deliverable Grades (Bushels)				Nondeliverable Grades (Bushels)				Ungraded (Bushels)				Total in Federal Warehouses (Bushels)			
	1946	1945	1944	1943	1946	1945	1944	1943	1946	1945	1944	1943	1946	1945	1944	1943
Jan. 5..	109,089	397,633	934,827	6,699,290	1,222,857	1,170,866	440,876	2,437,641	--	--	--	--	1,331,626	1,568,219	1,375,805	9,136,931
Jan. 12..	86,513	327,808	728,337	6,865,711	1,153,587	1,149,588	604,589	2,489,631	--	--	--	--	1,240,100	1,477,396	1,332,926	9,356,342
Jan. 19..	131,453	421,556	908,856	6,754,441	1,232,082	1,302,327	934,677	2,765,949	--	--	--	--	1,363,535	1,723,885	1,843,533	9,520,390
Jan. 26..	131,663	421,556	657,178	6,581,888	1,856,298	1,302,327	1,320,622	2,[illegible]	--	--	--	--	1,987,[illegible]	1,723,885	1,977,800	9,510,618
Feb. 2..	78,234	1,104,953	629,387	6,317,611	2,783,765	2,028,423	1,272,320	3,[illegible]	--	--	--	--	2,861,999	3,133,376	1,901,707	9,780,548
Feb. 9..	121,910	1,279,431	687,443	6,722,625	3,712,867	2,060,381	1,276,246	3,640,044	--	--	--	--	3,834,777	3,339,[illegible]	1,963,689	10,362,669
Feb. 16..	91,807	1,565,738	2,000	6,905,515	4,373,213	2,346,178	1,183,918	3,664,493	--	--	--	--	4,465,120	3,911,916	1,935,918	10,590,008
Feb. 23..	299,269	1,339,033	741,641	7,092,178	4,881,858	2,671,552	1,152,506	3,[illegible]	--	--	--	--	5,180,957	4,010,585	1,894,147	10,828,373
March 2..	295,[illegible]	1,569,033	720,580	7,118,291	5,577,314	2,657,196	898,122	3,618,773	--	--	--	--	5,873,083	4,226,231	1,619,702	10,737,064
March 9..	311,801	1,990,[illegible]	662,897	7,088,801	6,168,562	2,066,086	918,559	3,450,101	--	--	--	--	6,480,[illegible]	4,056,859	1,479,726	10,586,902
March 16..	456,841	1,821,490	389,914	7,007,890	5,843,709	1,876,709	584,478	3,193,241	--	--	--	--	6,300,550	3,698,199	964,390	10,200,831
March 23..	615,511	1,854,349	360,129	6,670,[illegible]	5,503,081	1,701,164	410,232	2,947,034	--	--	--	--	6,118,592	3,555,513	770,361	9,617,784
March 30..	787,011	1,904,490	410,871	6,524,191	5,334,581	1,527,399	394,172	2,535,943	--	--	--	--	6,091,592	3,431,889	805,043	9,060,134
April 6..	902,843	1,541,506	215,423	6,802,263	5,462,797	1,483,029	208,822	2,024,645	--	--	--	--	6,365,640	3,004,534	424,245	8,826,908
April 13..	1,079,301	1,191,717	151,208	6,080,386	5,021,616	1,380,149	139,276	1,699,136	--	--	--	--	6,100,917	2,571,866	290,484	7,779,521
April 20..	1,195,570	1,056,728	121,875	5,840,470	4,514,120	1,059,486	105,271	498,946	--	--	--	--	5,709,690	2,116,214	226,948	6,339,416
April 27..	1,363,244	695,301	108,441	5,555,956	4,070,112	990,544	84,993	713,605	--	--	--	--	5,483,356	1,685,845	191,434	6,069,563
May 4..	2,028,642	577,145	115,461	5,416,560	3,666,437	996,018	64,123	659,217	--	--	--	--	5,595,079	1,572,161	179,614	6,076,077
May 11..	3,392,003	670,227	205,006	5,198,368	3,391,495	1,162,368	116,918	474,639	--	--	--	--	6,783,498	1,832,595	321,925	5,673,007
May 18..	4,608,920	437,999	387,317	4,657,086	2,794,942	1,139,534	199,861	348,363	--	--	--	--	7,403,862	1,577,533	587,178	5,005,449
May 25..	4,918,339	324,533	351,661	3,976,939	2,348,687	970,395	42,308	788,500	--	--	--	--	7,267,026	1,294,928	393,969	4,765,439
June 1..	5,176,498	262,212	262,543	2,976,356	1,740,344	898,019	83,800	255,626	--	--	--	--	6,916,839	1,160,231	346,343	3,229,982
June 8..	4,168,774	108,799	581,449	2,211,440	1,498,370	672,110	115,883	176,814	--	--	--	--	5,667,144	780,899	675,142	2,388,254
June 15..	3,659,388	196,621	1,036,959	1,754,212	1,417,281	606,915	241,949	86,817	--	--	--	--	5,076,619	803,536	1,278,908	1,841,029
June 22..	3,227,472	217,452	1,690,435	1,341,324	1,048,581	525,737	327,624	90,625	--	--	--	--	4,276,053	743,189	2,018,059	1,431,749
June 29..	2,772,363	309,759	2,015,114	1,375,995	805,215	489,266	313,877	103,920	--	--	--	--	3,577,578	799,025	2,329,991	1,479,915

[fol. 651]

For corn, the showing is that in each of the years 1944, 1945 and 1946, the quantities in store during the first four months of the year were small as compared with 1943. In 1945, the May futures were closed out without defaults, but the quantity of deliverable grades was drawn down to less than 109,000 bushels early in June. There was some recovery to about 310,000 bushels in store at the end of June 1945, but there were defaults on the July future necessitating settlement by action of the Board of Trade. Also, the September future was prematurely closed out early in August by Chicago Board of Trade Regulation 1884, the reason ascribed being doubt that sufficient corn could be accumulated in Chicago by the end of September to satisfy the outstanding September contracts.

The year 1946 opened with very little corn of deliverable grades in store but with more than a million bushels of undeliverable grades in Chicago. (See Appendix Table 2.) The quantity of nondeliverable grades built up to more than 6,000,000 bushels in March, and it became possible to begin to make and accumulate deliverable grades in increasing quantities against the maturity of May contracts. Increase in the quantity of deliverable grades became very rapid after the Government began paying a premium of 30 cents per bushel for corn late in April.

The result was the accumulation of an unusual quantity of corn of deliverable grades in Chicago which rose to more than 5,000,000 bushels in federally licensed warehouses early in June. The bulk of this unusual accumulation, however, belonged to the Government, or was earmarked for preferred order deliveries to eastern buyers so that it was not available for delivery on futures. The corn supply situation actually was very precarious so far as supply for delivery on futures was concerned at all times, and after the May 13 ceiling price increase of 25 cents per bushel went into effect, no one, even though he might control some free corn in deliverable position in Chicago, would deliver it on the May future at the old ceiling price as ordered by the Chicago Board of Trade in its Regulation 1894. Furthermore, the Board stated specifically that it would give no consideration to increases in prices arising from the increases in ceiling prices in considering any penalties on defaults arising through failure of sellers to deliver on old futures contracts outstanding on May 11, 1946. There really was no chance of obtaining corn on May 1946 futures after the May 13 ceiling price increase and the close-out order of the Chicago Board of Trade.

Rye

Appendix Chart 6 and Table 3 deal similarly with the rye supply situation.

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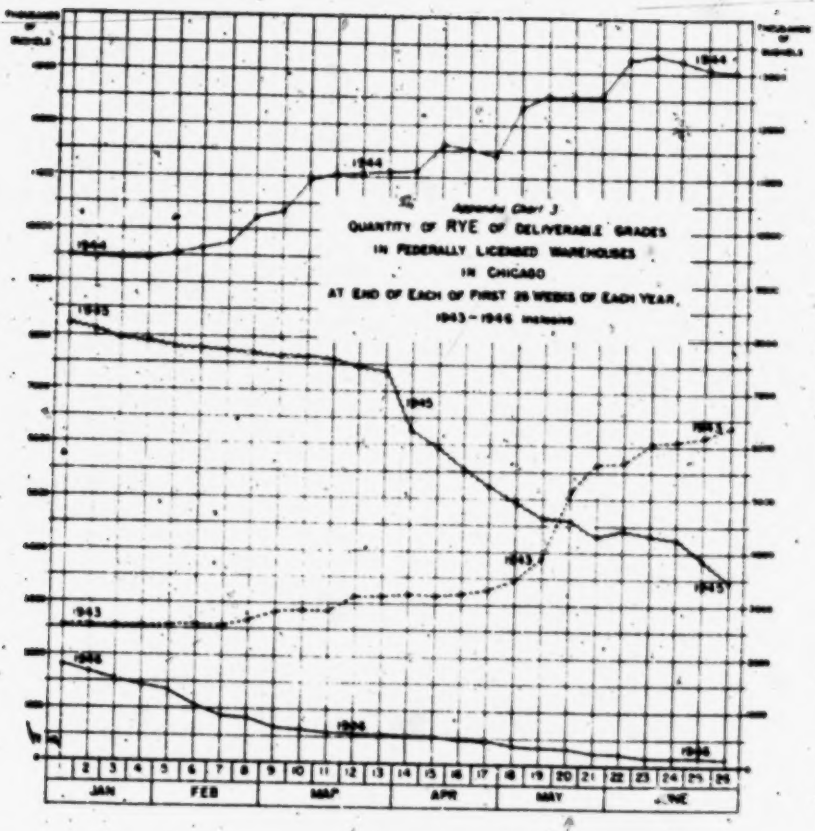
Appendix Chart 3
QUANTITY OF RYE OF DELIVERABLE GRADES
IN FEDERALLY LICENSED WAREHOUSES
IN CHICAGO
AT END OF EACH OF FIRST 26 WEEKS OF EACH YEAR,
1943 - 1946 inclusive
1944
1944
1945
1945
1943
1943
1946
1946
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26
JAN
FEB
MAR
APR
MAY
JUNE

[fol. 653]

APPENDIX TABLE III

RYE IN DELIVERABLE POSITION IN FEDERAL LICENSED WAREHOUSES IN CHICAGO - FIRST 6 MONTHS OF EACH YEAR, 1943 - 1946

Week of 1946 Ending	Deliverable Grades				Nondeliverable Grades				Total			
	1946	1945	1944	1943	1946	1945	1944	1943	1946	1945	1944	1943
January 5	1,816,211	8,236,690	9,487,525	2,506,849	116,525	317,302	319,465	1,152,134	1,932,736	8,553,992	9,806,990	3,658,983
January 12	1,699,313	8,105,885	9,472,000	2,521,986	197,535	279,122	317,290	1,129,983	1,896,848	8,385,007	9,789,290	3,651,969
January 19	1,553,606	7,970,383	9,454,613	2,519,686	128,530	189,050	309,269	1,122,945	1,682,136	8,159,433	9,763,884	3,642,631
January 26	1,472,137	7,970,383	9,438,307	2,514,086	129,017	189,050	306,405	1,120,162	1,601,154	8,159,433	9,744,712	3,634,248
February 2	1,345,266	7,834,094	9,503,813	2,547,407	65,040	254,771	194,957	1,100,341	1,410,328	8,088,865	9,698,750	3,627,748
February 9	1,043,803	7,789,947	9,637,000	2,515,071	20,303	258,517	205,435	1,103,971	1,063,906	8,048,464	9,842,435	3,619,042
February 16	898,074	7,748,980	9,751,688	2,541,798	30,654	269,083	536,854	1,069,678	928,728	8,018,043	10,288,542	3,611,476
February 23	836,372	7,721,731	10,209,189	2,844,144	30,051	273,914	533,652	890,861	866,423	7,995,645	10,742,841	3,535,005
March 2	689,221	7,697,383	10,374,619	2,818,890	50,852	273,164	347,895	953,673	740,073	7,970,547	10,722,514	3,752,563
March 9	619,178	7,859,182	10,928,574	2,878,051	33,998	273,165	381,070	1,068,386	653,176	7,932,347	11,309,644	3,936,439
March 16	558,643	7,697,830	11,027,850	2,881,636	51,542	251,710	568,942	1,418,905	590,185	7,849,540	11,596,792	4,300,541
March 23	567,848	7,462,980	11,098,961	3,156,027	39,557	328,084	741,681	1,717,971	567,406	7,791,064	11,830,642	4,875,998
March 30	527,557	7,282,783	11,104,915	3,168,538	19,543	396,392	819,162	1,679,629	547,100	7,779,175	11,924,077	4,848,167
April 6	517,557	6,283,440	11,156,423	3,189,443	20,877	305,642	842,713	1,648,517	538,434	6,589,082	11,999,136	4,837,960
April 13	508,177	5,971,808	11,634,116	3,165,491	23,791	288,915	598,139	1,649,958	531,968	6,260,821	11,962,257	4,815,449
April 20	494,138	5,529,057	11,527,167	3,203,194	5,864	277,187	371,167	1,620,254	500,002	5,806,244	11,898,334	4,823,448
April 27	475,277	5,199,617	11,466,798	3,273,726	7,111	207,510	486,167	371,167	482,388	5,407,327	11,954,965	4,875,053
May 4	387,806	4,852,341	12,390,660	3,443,769	12,748	230,541	361,290	1,522,533	400,554	5,182,882	12,751,950	4,966,302
May 11	306,195	4,679,812	12,521,052	3,570,597	11,732	218,157	414,973	1,269,499	317,930	4,897,969	12,936,025	5,140,096
May 18	301,848	4,529,381	12,824,322	5,144,780	5,089	224,810	351,566	964,507	307,911	4,954,191	12,905,877	6,109,287
May 25	212,613	4,310,432	12,538,995	5,668,529	3,515	140,428	318,427	740,346	216,128	4,450,860	12,857,417	6,408,875
June 1	205,510	4,437,763	13,265,606	5,697,965	99	181,924	255,113	908,161	205,609	4,619,287	13,516,719	6,606,146
June 8	167,407	4,380,280	13,298,055	6,055,162	---	163,547	210,322	808,386	167,407	4,543,787	13,502,377	6,861,548
June 15	129,839	4,295,400	13,215,119	6,097,337	---	212,563	227,409	684,126	129,839	4,497,963	13,442,528	6,781,463
June 22	124,698	3,891,189	13,098,323	6,162,145	---	287,310	201,487	859,538	124,698	4,178,499	13,297,810	7,021,683
June 29	108,113	3,476,087	13,068,769	6,339,084	---	359,468	187,[illegible]	900,707	108,113	3,835,523	13,225,868	7,239,771

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There was an unusual accumulation of rye of deliverable grades in federal warehouses in Chicago beginning in 1943 which built up to an abnormal total of over 13,000,000 bushels in June, 1934. This would mean that at the end of the 1943-44 crop year, over 30 percent of the five-year average crop of rye amounting to about 43,000,000 bushels annually from 1939 through 1943, was concentrated in Chicago at the end of the crop year. This quantity was forced to Chicago by speculative activity engendered by such facts as that the rye crop of 1943 was less than 30,500,000 bushels, and that it was the only grain not subject to ceiling price control in 1943.

During the first half of 1945, following a still smaller crop of 25,500,000 bushels in 1944, the quantity in store in Chicago, dwindled to less than 3,500,000 bushels. Following another small crop of 26,354,000 bushels in 1945, the quantity of deliverable grades decreased from 1,816,000 bushels at the beginning of 1946, and to 128,839 bushels on June 15. Since most of this small supply probably was owned by processors who would neither sell outright for cash nor deliver it on futures, the probabilities are that very little of the small supply in store would have been available for future delivery. Also at this time, new crop rye was not likely to become available for delivery on July future, for the reason that it was being withheld from normal marketing channels in anticipation of higher prices if price controls expired on June 30.

Barley

As shown by Appendix Chart 4 and Table 4, the statistics for barley of deliverable grades in federally licensed warehouses were sketchy in both 1943 and 1944. Only small quantities either of deliverable or nondeliverable grades were shown during January and February of 1944 and no deliverable grades were reported from early in March to the end of June. In 1945 there was a better supply of both deliverable and nondeliverable grades throughout the six months, and there was a sharp increase in deliverable grades in May. January 1946 started off with a quantity of deliverable grades comparable with that in store in 1945, but the quantity decreased rapidly through the second week of March, and disappeared altogether after the middle of May 1946. With no barley of deliverable grades in sight and no one willing to deliver barley on the May future at the old ceiling price, 302,000 bushels of May futures contracts were defaulted on May 31.

[fol. 655]

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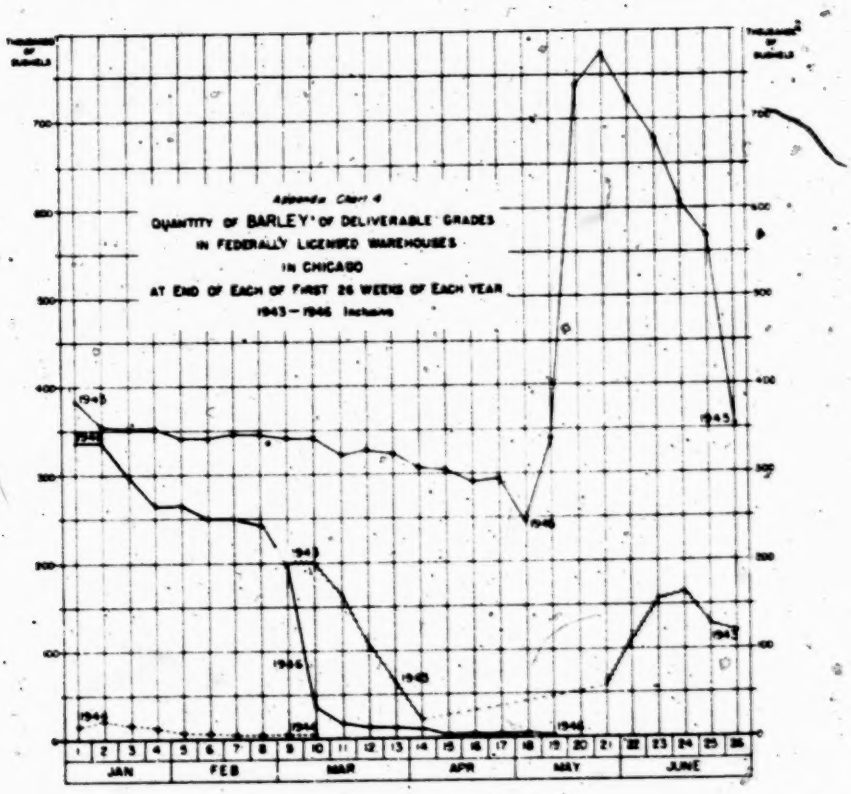
Appendix Chart 4
QUANTITY OF BARLEY OF DELIVERABLE GRADES
IN FEDERALLY LICENSED WAREHOUSES
IN CHICAGO
AT END OF EACH OF FIRST 26 WEEKS OF EACH YEAR
1943 – 1946 Inclusive
1943
1944
1945
1946
JAN
FEB
MAR
APR
MAY
JUNE

APPENDIX TABLE IV. BARLEY IN DELIVERABLE POSITION IN FEDERAL LICENSED WAREHOUSE IN CHICAGO - FIRST 6 MONTHS OF EACH YEAR, 1943 - 1946

Week of 1946 Ending	Deliverable Grades				Nondeliverable Grades				Total			
	1946	1945	1944	1943	1946	1945	1944	1943	1946	1945	1944	1943
January 5	338,617	386,608	15,000	---	41,227	186,170	37,185	43,079	379,844	572,773	52,185	43,079
January 12	338,617	355,567	20,000	---	40,292	214,214	29,066	47,015	378,909	569,771	49,066	47,015
January 19	299,194	351,123	17,791	---	40,906	222,131	6,270	52,006	340,099	573,254	24,061	49,086
January 26	267,711	351,123	11,791	---	48,269	222,131	8,960	53,502	315,980	573,254	20,751	53,502
February 2	267,711	343,663	6,905	---	51,766	138,730	9,501	56,204	319,477	542,393	16,406	56,204
February 9	250,311	343,663	2,905	---	46,361	190,920	26,459	59,714	296,672	534,583	29,364	59,714
February 16	250,311	347,390	2,905	---	46,361	178,422	38,474	60,607	296,672	525,812	41,379	60,607
February 23	245,309	347,379	2,905	---	38,617	173,239	47,155	51,747	283,926	520,618	50,060	166,083
March 2	197,027	341,379	2,905	199,972	50,207	169,976	48,466	42,727	247,234	510,355	49,371	242,699
March 9	36,961	341,379	2,905	199,972	61,252	148,495	49,905	42,727	98,213	489,874	52,810	242,699
March 16	19,582	321,517	---	182,327	62,231	155,892	48,305	34,123	81,813	477,209	48,305	196,450
March 23	13,182	326,139	---	106,413	62,231	145,996	49,133	18,608	75,413	472,135	49,133	125,021
March 30	13,182	322,139	---	67,851	62,231	147,286	44,625	35,461	75,413	469,425	44,825	103,312
April 6	9,582	306,139	---	22,100	62,231	146,753	37,986	52,107	71,813	452,892	37,986	74,207
April 13	1,297	304,139	---	---	61,828	147,780	32,404	50,288	63,125	451,929	32,404	50,288
April 20	1,297	292,566	---	---	61,828	108,407	30,843	57,701	63,125	400,973	30,843	57,701
April 27	1,297	294,062	---	---	61,828	107,641	26,617	48,331	63,125	401,708	26,617	48,331
May 4	1,297	245,962	---	---	54,745	117,798	19,936	52,554	56,042	363,760	19,936	52,554
May 11	963	339,307	---	---	51,440	23,582	15,174	42,628	52,403	365,889	15,174	42,628
May 18	---	739,179	---	---	47,403	23,170	14,917	119,512	47,403	762,349	14,917	119,512
May 25	---	775,778	---	63,771	45,737	29,516	15,911	29,154	45,737	805,294	15,911	92,925
June 1	---	723,400	---	112,202	43,969	57,612	9,580	28,409	43,969	781,012	9,580	140,611
June 8	---	678,307	---	154,711	43,969	64,068	10,037	24,611	43,969	742,375	10,037	179,322
June 15	---	607,807	---	166,918	40,789	78,399	10,037	223,125	40,789	686,206	10,037	390,043
June 22	---	569,583	---	128,252	37,355	89,109	10,037	284,437	37,355	658,642	10,037	412,689
June 29	---	351,614	---	120,023	7,374	107,256	7,562	244,309	7,374	458,870	7,852	364,332

[fol. 657]

Oats

The showing for oats of deliverable grades in 1943, 1944 and 1945 is characterized by stocks of less than 500,000 bushels of deliverable grades in store in Chicago's federally licensed warehouses at the beginning of each of the three years. April and May of each of the years 1943 and 1945 brought greatly increased supplies of deliverable grades followed by decreases after maturity of the May future. In 1944 the quantity of deliverable grades never was large, and it fell to less than 100,000 bushels in March and remained low throughout the months of April, May and June.

January 1946, however, started off with over 2,700,000 bushels of deliverable grades in store. The trend of deliverable grades in store was quite steadily downward from this high point to less than 100,000 bushels late in June. Nondeliverable grades in 1946 showed a similar downward trend as shown by Table 5. Oats were, in fact, the only grain in reasonably plentiful supply throughout the first six months of 1946. Yet on May 31, 5,514,000 bushels of May oats futures contracts were defaulted, largely for the reason that the ceiling price increase of 5 cents per bushel, effective on May 13, made oats worth up to 5 cents more per bushel on the cash tables than the old ceiling settlement price for May futures fixed by regulation of the Board of Directors of the Chicago Board of Trade, by Regulation 1894, adopted May 12, 1946.

[fol. 658]

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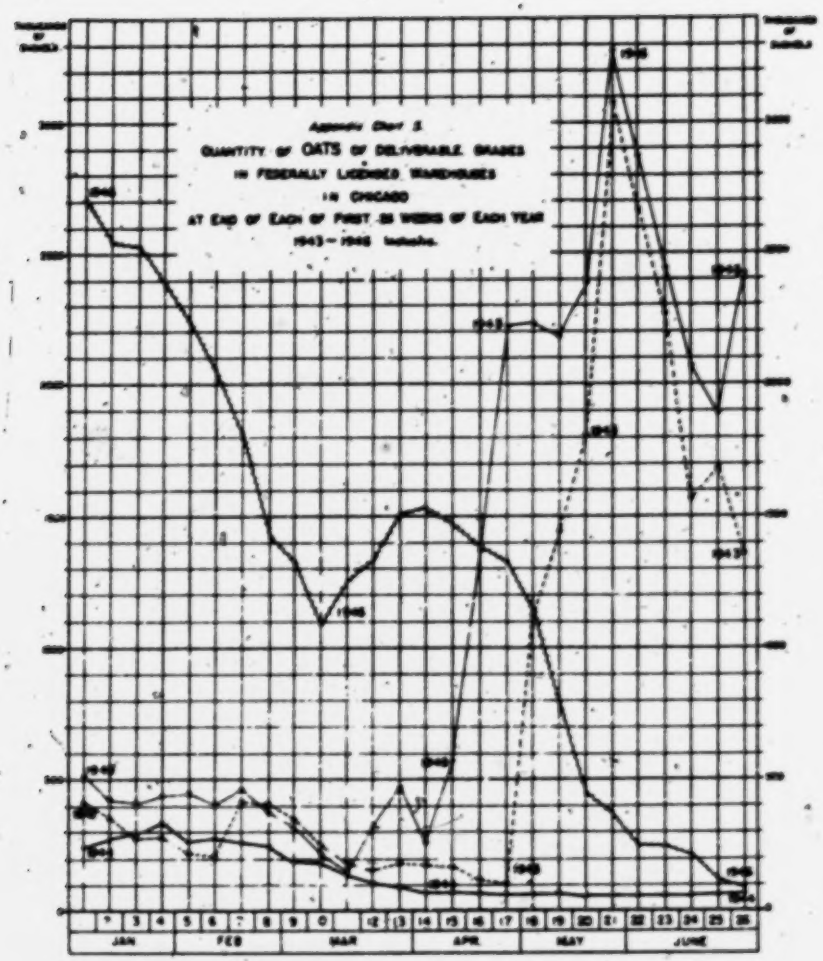
Appendix Chart 5
QUANTITY OF OATS OF DELIVERABLE GRADES
IN FEDERALLY LICENSED WAREHOUSES
IN CHICAGO
AT END OF EACH OF FIRST 35 WEEKS OF EACH YEAR
1943 – 1948 Inclusive.
JAN
FEB
MAR
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MAY
JUNE

[fol. 659]

APPENDIX TABLE V

DATE IN DELIVERABLE PUBLIC A IN FEDERAL LICENSE AREA SERVICE UNDER [illegible]

Week Ending	Deliverable Acres				Acreage Harvested				Total Insured Acreage			
	1945	1944	1943	1942	1945	1944	1943	1942	1945	1944	1943	1942
January 5	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
January 12	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
January 19	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
January 26	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
February 2	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
February 9	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
February 16	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
February 23	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
March 2	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
March 9	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
March 16	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
March 23	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
March 30	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
April 6	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
April 13	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
April 20	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
April 27	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
May 4	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
May 11	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
May 18	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
May 25	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
June 1	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
June 8	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
June 15	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
June 22	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
June 29	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Totals	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Chicago, Illinois, December 19, 1952

It appearing that the following named persons have been nominated by the judges of the Circuit Court of Cook County as Masters in Chancery of this court for the term of two (2) years commencing the first day of December, A. D. 1952, and ending on the thirtieth day of November, A. D. 1954: Albert M. Sheppard to succeed Max M. Korshak and Harold E. Sullivan to succeed himself.

THEREFORE, we the undersigned judges of the Circuit Court of Cook County hereby approve and appoint the following named persons: Albert M. Sheppard to succeed Max M. Korshak and Harold E. Sullivan to succeed himself as Masters in Chancery of this court for the term of two (2) years commencing the first day of December, A. D. 1952, and ending on the thirtieth day of November, A. D. 1954.

We further direct that the Chief Justice of this court enter an order accordingly.

STATE OF ILLINOIS }
COUNTY OF COOK } SS.

CIRCUIT COURT OF COOK COUNTY

In the matter of the appointment of Masters in Chancery.

It appearing that a majority of the judges of the Circuit Court of Cook County signified in writing their approval of the nominations of Albert M. Sheppard to succeed Max M. Korshak and Harold E. Sullivan to succeed himself as Masters in Chancery for the Circuit Court of Cook County, and directed the Chief Justice to enter an order appointing the said Albert M. Sheppard to succeed Max M. Korshak and Harold E. Sullivan to succeed himself as Masters in Chancery for the Circuit Court of Cook County for the term of two years commencing the first day of December, A. D. 1952.

IT IS, THEREFORE, ORDERED that the said Albert M. Sheppard and Harold E. Sullivan be, and they are hereby, appointed Masters in Chancery for the Circuit Court of Cook County for the term of two years commencing the first day of December, A. D. 1952.

Chief Justice.

Chicago, December 19, 1952.

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[fol. 662]

State of Illinois, }
County of Cook. } ss.

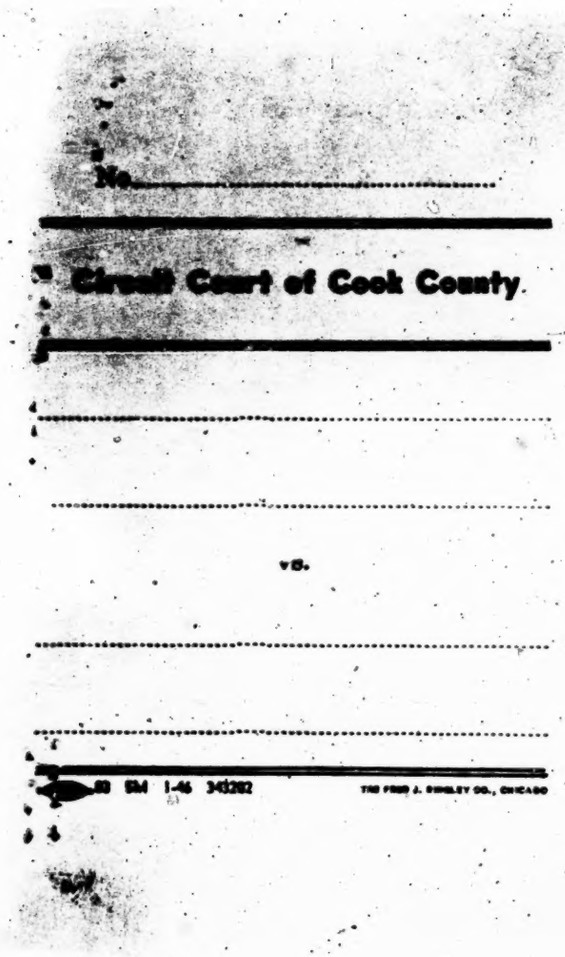
I, JOHN E. CONROY, Clerk of the Circuit Court of Cook County, and the keeper of records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain order entered by the Chief Justice, William J. Tuohy, on the 19th day of December A.D. 1952.

In Witness Whereof, I have hereunto set my hand and affixed the Seal of said Court, at Chicago, in said County, this 23rd day of September 1953

Francis X. Connell Clerk.

Form 388

[fol. 663]



[fol. 664]

DEFENDANTS' EXHIBIT 94

HAROLD E. SULLIVAN
ATTORNEY
7 SOUTH DEARBORN STREET
CHICAGO 3

MASTER IN CHANCERY
CIRCUIT COURT

FRANKLIN 2-3232

September 7, 1950

Mr. James B. Mc Cahey,
Morrison Hotel,
Chicago, Illinois

In re: The Shotwell Mfg. Co.,
3501 W. Potomac Ave., Chicago, Ill.

Dear Jim:

You will recall that I talked with you some time ago pertaining to an apparent claim of the Government for income tax due for the years 1944, 1945 and 1946 from The Shotwell Mfg. Co.

I do not have the figures before me at the present time, but I know that sometime during these years we deemed it necessary to violate the OPA Regulations to get additional chocolate, sugar, corn syrup, etc., in order to stay in business, and a full disclosure was subsequently made in connection with these matters.

In June 1948 a special agent of the Internal Revenue Office, Charles Mammel, visited our factory to make an investigation in furtherance of disclosures heretofore made to them. The Executives and employees of the company have been instructed to cooperate in every way with the agent making this investigation, and I believe that these instructions have been carried out.

I cannot help but feel that the time has arrived when this investigation should be completed and, if necessary, a tax levied. I am certain that 2½ years of this continuous inves'igation should be sufficient.

As I also informed you, I not only represent the company, but I am an officer of the company as well. Maybe that old saying applies here: "He who represents himself has a fool for a client." Be that as it may, I am almost positive that were I acting only in the capacity of a lawyer, I would have insisted that this matter be brought to a close before now. So, maybe I should be criticized.

I represented Shotwell for the past 20 years, and it was not until 1942 that I became financially interested in the company. For 10 years previous to the time that I became associated with the company the total volume of business done was not in excess of $11,000,000, without profit, and naturally no tax was paid to the United States Government.

Since 1942, up to and including the year 1949, a total volume of business done by the company was in excess of $42,000,000, and during that period of time an income tax was levied and paid in the amount in excess of $2,700,000.

[fol. 665] I just give you these figures to let you know that a considerable amount has been paid in the way of income tax to the Government, and if it were not for the fact that we did do certain things that perhaps were in violation of the OPA, the Government would never have collected that amount of money.

I am open for suggestions as to how to bring this matter to a head.

Sincerely yours,

HES.o

[fol. 666]

DEFENDANTS' EXHIBIT 95

DEPARTMENT OF STATE
WASHINGTON

ADDRESS OFFICIAL COMMUNICATIONS TO
THE SECRETARY OF STATE
WASHINGTON 25, D. C.
(Emblem)

In reply refer to
C130-Lubben, David George

September 30, 1953

Mr. Alan Y. Cole,
927 Fifteenth Street, Northwest,
Washington 5, D. C.

Mr. dear Mr. Cole:

The Department acknowledges the receipt of an order of the District Court of the United States, Northern District of Illinois, Eastern Division, dated September 29, 1953 to the effect that certain information is required from the passport file of David George Lubben for the use of your clients.

It appears from the Department's records that American passport No. 260684 was issued on August 6, 1948 to David George Lubben upon the basis of an application which he executed on August 3, 1948 and in which he stated, in effect, that he intended to leave the United States on September 10, 1948 by ship out of New York for travel to nearly all countries of the Western Hemisphere to locate and contract for new items to be sold to a syndicate of stores. He further stated that he intended to remain abroad for a period of six months and that he had never had a prior passport.

The above-mentioned passport was renewed on November 22, 1950 for travel to the British Honduras, and Brazil for

business purposes. The renewed passport was valid until August 5, 1952.

[fol. 667] The Department does not keep records of the dates upon which American citizens depart from or enter into the United States.

Photostatic copies of the above-mentioned passport and renewal applications are being prepared and will be made available to you.

Sincerely yours,

/s/ R. B. SHIPLEY

R. B. Shipley,
Director, Passport Office

600

[fol. 668]

DEFENDANTS' EXHIBIT 95B

130

FORM DSP-11

DEPARTMENT OF STATE
PASSPORT APPLICATION

FORM FOR NATIVE CITIZEN

[Section 1 of 1887]

Execute and attach PART TWO if members of family are to be included in passport

PASSPORT ISSUED AUG 6 1948 DEPARTMENT OF STATE

UNITED STATES OF AMERICA
STATE OF .....
COUNTY OF .....
} ss:

(Name in full) ..... a CITIZEN OF THE UNITED STATES, do hereby apply to the Department of State, at Washington, for a passport. I solemnly swear that I was born at ..... (Town or city) ..... (Province or county) ..... (State or country) ..... on ..... (Date)

I am domiciled in the United States, my permanent residence being at ..... (Street address) in ..... (Town or city) ..... State of .....

I have resided outside the United States as follows:
(State name of, and period of residence in, each foreign country)

..... from ..... to .....

..... from ..... to .....
(Names of countries)

My father, ... (Name) ..... was born at .....
on or about ..... (Date) ..... now residing at ..... (The following [illegible] in the United States)

My father emigrated to the United States [illegible] 1 ..... (Year) ..... resided ..... years continuously in the United States [illegible] naturalized as a citizen of the United States before the ..... at ..... (City) ..... 1 ..... (Year)

My mother, ... (Name) ..... on or about ..... (Date) ..... (The following [illegible] United States)

My mother emigrated to the United States [illegible] ..... (Year) ..... resided ..... years continuously in the United States from ..... [illegible] citizenship in the United States by .....

DESCRIPTION OF APPLICANT

Height ..... feet, ... inches.

Hair .....

Eyes .....

Distinguishing marks or features ..... (Note any marks by [illegible] hands or face by which applicant may be identified)

Place of birth ..... (City and State)

Date of birth ..... (Month, day, and year)

Occupation .....

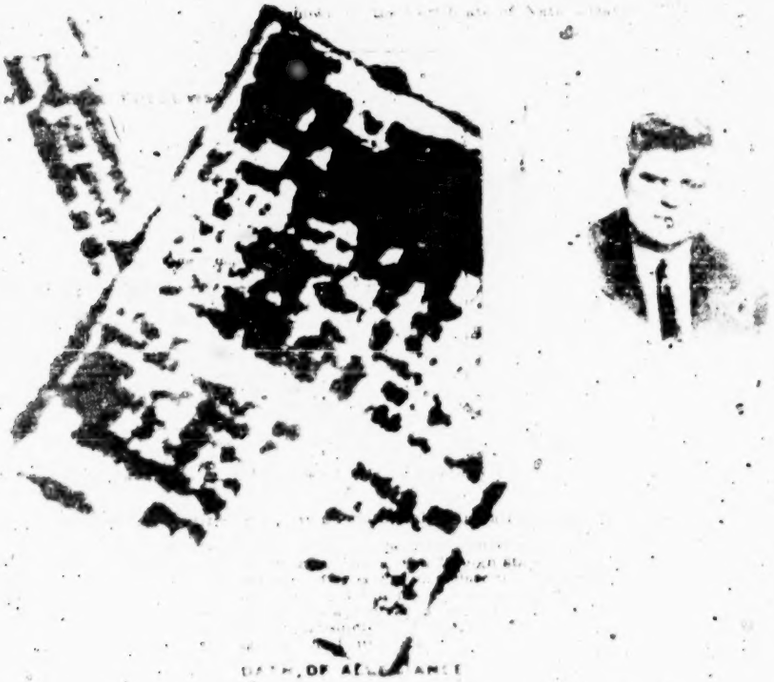
MAILING ADDRESS
(Print complete address plainly)

(Do not use this space)

18714

My last American passport was obtained from ..... and is submitted herewith for cancellation

A WOMAN APPLICANT WHO IS OR HAS BEEN MARRIED MUST FILL IN



[fol. 670]

DEFENDANTS' EXHIBIT 96

TREASURY DEPARTMENT
Bureau of Internal Revenue
Washington 25, D. C.

Revision of Address by J. P. Wenchel entitled "Tax Frauds and Voluntary Disclosures".

The following corrections and insertions should be made in the text of the address prepared by J. P. Wenchel, Chief Counsel of the Bureau of Internal Revenue, for delivery before the Tax Executives Institute in New York on May 14, 1947:

1. On Page 3, the first line should read "their estates were".

2. On Page 3, after the first paragraph, which closes with the words "take it with them," insert the following:

"One thing the tax-evader seems never able to appreciate is that in these days of high taxes there is always someone comparing his income with his own and wondering how he's able to live as well as he does and still pay his taxes. He doesn't seem to know that there has been on the statute books since 1867 a provision of law which authorizes the Commissioner to pay for information leading to the discovery and recovery of additional revenue. The Act of March 4, 1867, now carried in the Internal Revenue Code as Section 3792, encourages informers, and the informer runs the complete scale from disgruntled employees to discarded wives. One of the most interesting cases of the latter sort occurred recently when a wife appeared before the Chief of the Intelligence Unit of the Bureau and stated that she wished to inform against her husband for evading his income tax. She was asked whether she had anything more than a suspicion and she replied that she certainly did. Upon being pressed, she stated he had cheated on everything else, including her, and that

it was inconceivable that he had not cheated the Government. Another interesting case occurred when one of two partners, having had a falling out over some finances, appeared before a special agent and stated he wished to inform against his partner who had been evading his income tax. Upon questioning, the revenue agent quickly discovered that not only had the partner informed against evaded his income tax but the informer had also evaded his, and, furthermore, that both had connived together to evade the income tax of the partnership."

3. On Page 4, the last full paragraph should be corrected to read as follows:

"Turning to the civil sanctions for the protection of the revenues, although a voluntary disclosure may relieve a taxpayer of criminal prosecution, it will not necessarily relieve him of the civil penalty for fraud. The Department may insist upon the maximum * * * (resuming the remainder of the paragraph as originally written)."

4. On Page 4, after the last full paragraph, which closes with the words "added to the tax.", insert the following:

[fol. 671] "This is true even for the year 1942, the year of forgiveness, under Section 6 of the Current Tax Payment Act of 1943 and no part of the tax for 1942 is forgiven. Under Section 6 of the Current Tax Payment Act of 1943, it is expressly provided that the discharge of the tax for the year 1942 as therein provided shall not be applicable in any case in which the taxpayer is convicted of any criminal offense with respect to the tax for 1942 or in which additions to the tax for the taxable year 1942 are applicable by reason of fraud. Therefore, the practical result of fraud in the year 1942 return brings about not merely a 50 per cent penalty but a penalty in astronomical figures."

[fol. 672]

TREASURY DEPARTMENT
Bureau of Internal Revenue
Washington 25, D. C.

(The following address by J. P. Wenchel, Chief Counsel of the Bureau of Internal Revenue, was prepared for delivery before the annual dinner of the Tax Executives Institute at the Waldorf-Astoria hotel in New York City at 10 p.m., Eastern Daylight Saving Time, May 14, 1947, and is for release at that time.)

TAX FRAUDS AND VOLUNTARY DISCLOSURES

I want to say a few plain words tonight about tax frauds and voluntary disclosures by repentant taxpayers.

I think this subject is particularly important to this audience whose declaration of principles are: "The Tax Executives Institute stands for the practice of the highest ethical standards in the administration of tax accounting and procedure in the preparation of tax returns, reports and other presentations toward the establishment of confidence by management and tax authorities and to assist its members in their many problems of taxation. The Tax Executives Institute hereby dedicates itself to the observance of these principles."

I think this subject is important to our radio listeners as well because—sooner or later—the honest taxpayers must make up the revenues that the cheat evades.

At the outset, let me make it clear that the tax laws define two entirely different kinds of tax fraud. One is criminal. The other is civil. Of course, a person may be guilty of both.

But if you keep this distinction in mind, you will be able better to understand the Treasury's policy of encouraging the repentant taxpayer to clear himself without criminal punishment, even though he may be required to pay his taxes plus a civil money penalty for his fraud upon the government.

Happily, by far the majority, of course, recognize their obligations and to the best of their ability fulfill them.

There is, however, that cross section which, while percentagewise may be small, bulks large in the work of the Department, particularly now, as well as during the war years. With record billions in cash in circulation and high rates of tax, the temptation, and it is simply that, has been strong. Regrettably, too, tax frauds have not been, and are not, confined to a class. The sorry picture is, and you have seen it particularly the last few years in your own newspapers, that all too many in every line of endeavor have been trying to bilk the country.

The cases run the gantlet and some of them are fantastic. At one end are the New York candy manufacturers who diverted 25 million pounds of sugar for soft drink purposes and then decided not to pay their taxes. They were caught. There are two interesting sidelights on that case. First, the 25 million pounds of sugar were the equivalent of a two-weeks' wartime ration for every person in the country. Second, the sugar was obtained under the guise that it was being used in the manufacture of foodstuffs for Army and Navy hospitals.

[fol. 673] Then there is the doctor from Georgia whose case always appealed to me. He sent in a return for one year to which he attached a statement that while he did not owe any taxes he felt the country had been so good to him he should make a contribution. He ended up by making *quite* a contribution because at the same time he claimed he owed the government nothing, he in fact owed thousands.

Even the tattooing business skyrocketed during the war. One Hawaiian engaged in that business paid a young Japanese ten dollars to show him a simple method of understating income. The method? Drawing a line halfway down the true record of receipts and reporting only that amount above the line for tax purposes.

In another case, our examining officers personally observed the owner of a restaurant making alterations in her records. The original figures were clearly revealed when photographed under infra-red ray lamp. Although reporting a modest income, she had invested thousands of dollars in antiques, single premium life insurance, and a home and decorations.

Two brothers living in northern Ohio were "big-time" gamblers. Their illegal activities for years had gone virtually unchecked. A statement submitted with their pleas of guilty offered mitigating circumstances—the death of a bookie with whom they had placed bets on behalf of a local banker. The entire tax evasion resulted from sums the brothers had received in horse race bets from the banker, and involved several hundred thousand dollars. The Judge was so amazed that he remarked he had thought such cases happened only on radio programs.

Looking back over the welter of cases, I have been continually struck with the essential stupidity of the evader.

It's much like a school of fish swimming upstream. Each one pops up his head with what must appear to him as being an original method and quite foolproof. As a matter of fact, we've seen nothing new in the devices employed. All are merely variations of the same old themes. Maybe larger, perhaps more grandiose, but the patterns are the same with only slightly changed overtones.

What can the man do who attempts to evade his just taxes?

If he keeps a record, he is immediately in a dilemma, for once something is written down, curiously enough, some day and in some way that record, or copies, will turn up in the wrong hands. Once something goes down on paper, complications always set in. If a man keeps a wrong record, he must keep a correct one, too, and it is then only a question of time until trouble begins to boil. Witness the gentleman from one of our Southern states, once started, who was forced to end up keeping one set of records for his partnership, one for the Old A, one for Internal Revenue, one for his partner, and, finally, one for himself. He literally became lost in the morass of his own paper work.

If he keeps no record, then he deals in cash—a favorite form of attempted tax dodging. It is favored because it appears to leave no trail. The converse is actually the case. It is as true today as it always has been that money can either be spent or allowed to rot. Once it is begun to be spent, it leaves a trail, and our agents can and do follow every trail. If it rots no one is advantaged.

Let me give you an example which occurred just a few months ago on the West Coast. Two big-time gamblers had spent several years dodging the tax collector. We had reason to be suspicious that they weren't paying their taxes, [fol. 674] and they knew we were suspicious. Eventually both died. But when their estate was handed over to a reputable attorney for handling on behalf of their heirs, he found by means of sealed instructions and reported to us, over $2,000,000 that the gamblers had buried in the ground. Their cheating of the government never did them any good. They never felt safe to spend the money, and they couldn't take it with them.

Quite simply, attempted evasion is a disease, and a disease that has to be fought with strong remedies. That is why, once criminal fraud is discovered by our examining officers, the Federal Government is unbending and relentless. The law requires the prosecution of the tax evader and that is what the Department recommends to the Attorney General.

There is one important exception to that. The Department has broad discretionary power long recognized by the Congress to determine the policy and procedure for the effective enforcement of the internal revenue laws. The Department, acting under that power, does not recommend prosecution of the evader who repents in time. There is nothing new in the position. For years the position of the Department has been that where the taxpayer makes a voluntary disclosure of intentional evasion before investigation has been initiated, criminal prosecution will not be recommended.

The Department has always encouraged voluntary disclosures.

And what is a voluntary disclosure? A voluntary disclosure occurs when a taxpayer of his own free will and accord, and before any investigation is initiated, discloses fraud upon the government.

Healthy administration of the internal revenue laws long ago dictated that policy, and I believe that its worth is obvious.

The making of a voluntary disclosure is a simple thing. The taxpayer or his legal agent can go before any official of the Bureau of Internal Revenue or any of its field offices —whether it is the Collector, a Deputy Collector, a Revenue Agent, a Special Agent, or any other responsible Treasury officer. There is no special form for making the disclosure. The simple statement that "I have filed false tax returns and I want to make the government whole," would constitute a complete disclosure. Of course, it is usually best to present an amended return or other written document as evidence of the disclosure. If possible, the disclosure should be accompanied by payment of the tax which is known to be due, but this is not a prerequisite.

What kind of people make disclosures? They are all kinds. Some are people who are honestly repentant. Others are people who would rather sacrifice their ill-gotten gains than go to jail. Some are small people. Others are large corporations.

We had a good illustration recently in the midwest. A large produce concern, that had enriched itself on war contracts to help feed the army, came to see the light. It made a complete statement to our local officials and paid $1,765,000 in taxes, interest and civil penalties in order to clear its record and to keep its officers out of jail.

We have had voluntary disclosures from black market meat and car dealers. We have had similar repentances from people in all walks of life. Of the $3,000,000,000 collected from taxpayers within the past eighteen months as a result of the current drive against tax evaders, $500,000,000 has been paid on voluntary disclosures.

[fol. 675] Now we have said that in order to be considered voluntary, a disclosure must be made before we have initiated an investigation in the case. Therefore, it is essential that we define "the initiation of an investigation."

The mere record of a name does not mean that an investigation has been initiated. The fact is that examining officers throughout the country have thousands of names or possible leads. To deny the existence of a voluntary disclosure merely because we have a name, would be comparable to regarding the telephone book as a dossier of tax evaders.

> An investigation is initiated when a Special Agent, an Internal Revenue Agent, a Deputy Collector, or other Bureau officer, is assigned a return for examination, or where an investigating officer has requested advice of appropriate officers of the Bureau with respect to the filing of a return or the payment of taxes.

The time of disclosure and the time an investigation begins are, therefore, matters which can be ascertained with complete objectivity and certainty, thus protecting both the government and the taxpayer from decisions based on guess-work or other vague circumstances. To assure adherence to this principle, the Bureau stands ready at all times where a dispute may arise as to the time of a disclosure and the time an investigation was initiated to open its records in that regard.

We are not concerned with the motivating force behind an individual's deciding to come in and talk to us about his evasion. If he "gets religion" before we have done anything, he will not be prosecuted.

Before we leave this subject, let me make one thing clear. When we excuse a man from criminal prosecution because of his voluntary disclosure, we are not in any sense condoning his action. Nor are we letting anyone off easy. At the outset, I mentioned that there are two kinds of fraud, criminal and civil. Voluntary disclosure excuses a man from criminal punishment, but it does not excuse him from the civil penalties. Therefore, the public revenues and the public conscience are both protected by this policy.

In excusing the man from criminal prosecution, we are merely taking a sensible step to produce the revenue called for by law with the minimum cost of investigation. The man who makes a voluntary disclosure saves us a lot of money in investigating. In return, we can spare him a term in jail. This is good business from his standpoint and it is good business from the government's standpoint.

Turning to the civil sanctions for the protection of the revenues, although a voluntary disclosure will relieve a taxpayer of criminal prosecution, it will not relieve him of the civil penalty for fraud.[1] The Department insists upon the

[1] Statement of former Secretary Vinson, August 21, 1945, quoted in (April 1947) 25 Tax Magazine 293.

maximum civil penalties.[2] Section 293(b) of the Internal Revenue Code provides that, if any part of any income-tax deficiency is due to fraud with intent to evade tax, a penalty of 50% of the deficiency shall be added to the tax.[3]

Since the penalty is measured by the additional tax, no civil penalty can result from fraud unless there is a deficiency. If there is a deficiency, the 50% penalty attaches to its entire amount, if any part of it involves fraud.[4] In [fol. 676] fact, the penalty reaches back and applies to the entire additional tax which may have been paid, above that shown on the return, and is not limited to 50% of the deficiency shown in the deficiency notice.[5] Even if the taxpayer has paid the entire additional tax, further deficiency may be asserted consisting solely of the fraud penalty.[6] The 50% fraud penalty and the 25% penalty for delinquent filing of the return[7] may both be assessed, making a total penalty of 75%, if both fraud and delinquency are present.[8] On the other hand, the fraud penalty and the 5% negligence penalty[9] are mutually exclusive, and the fraud penalty alone applies if any part of the deficiency was due to fraud, even if another part was due to negligence.[10] Nevertheless, since an act which appears fraudulent may be found to have been merely negligent, it is not uncommon for the Commissioner to assert a negligence penalty as an alternative in the event that the fraud should not be established.[11] It appears, how-

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[2] Comparable penalties are found in section 1019 (b) for gift tax and in section 3612 (d) (2) for all other taxes.

[3] *Duffin* v. *Lucas* (C.C.A. 6th, 1932) 55 F. 2d 786, 798; I.O. 1028, 2 C.B. 233.

[4] *Maitland A. Wilson* (1946) 7 T.D. 395.

[5] *Thomas J. McLaughlin* (1933) 29 B.T.A. 247; Sol. Op. 52, 3 C.B. 290.

[6] Int. Rev. Code sec. 291.

[7] *Pincus Brecher* (1933) 27 B.T.A. 1108, 1110.

[8] Int. Rev. Code sec. 293 a).

[9] I. O. 1028, 2 C.B. 233.

[10] See *Thomas J. McLaughlin* (1933) 29 B.T.A. 247, 250; *Lucian T. Wilcox* (1941) 44 B.T.A. 373, 378; *Mabel Green* (1938) P.H. Memo. Dec. par. 38,213.

ever, that the courts will not of their own motion determine a negligence penalty when the Commissioner has asserted only fraud.[1]

It is impossible to lay down a general definition of fraud for purposes of applying the civil penalty. Mere negligence is not enough, of course, nor is ignorance or error of law.[2] It is not enough that the taxpayer was engaged in a generally fraudulent transaction, such as a fraud on his employer; an intent or purpose to evade tax is essential.[3] A corporation may be held responsible for the fraud of its officials, committed in its behalf; and its responsibility continues notwithstanding their death[4] or withdrawal from its business affairs.[5] Similarly, an individual taxpayer cannot insulate himself against liability for fraud by delegating the preparation of his return to others,[6] the issue in such cases being essentially one of the taxpayer's good faith.[7] The latter aspect is likewise stressed in the related problem of reliance upon the advice of counsel. While normally if a taxpayer acts upon the advice of reputable counsel, he will not be held liable for fraud penalties;[8] nevertheless,

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[1] *Duffin v. Lucas*, (C.C.A. 6th, 1932) 55 F. 2d 786, 798-9; *American Ideal Cleaning Co.*, (1934) 30 B.T.A. 329; *James Nicholson*, (1935) 32 B.T.A. 977, 989, aff'd on other points (C.C.A. 8th, 1937) 90 F. 2d 978.

[2] 10 Mertens, Law of Federal Income Taxation sec. 55.11.

[3] *National City Bank v. Helvering*, (C.C.A. 2d, 1938) 98 F. 2d 93, 96.

[4] Mertens, *supra*, sec. 57.36; *Hood v. Allen*, (M.D. Ga. 1941) 29 A.F.T.R. 1375.

[5] *L. Schepp Company*, (1932) 25 B.T.A. 419.

[6] *The Epic Corn Cob Bottling Co.*, (1925) 1 B.T.A. 531.

[7] *M. Rea Gano*, (1930) 19 B.T.A. 518, 533; *Est. of E.A. Wickham*, (1931) 22 B.T.A. 1393, aff'd. (C.C.A. 8th, 1933) 65 F. 2d 527.

[8] *Griffiths v. Comm'r*, (C.C.A. 7th, 1931) 50 F. 2d 782; *Gutterman Straus Co.*, (1925) 2 B.T.A. 433; *M. Rea Gano, supra*; *Est. of E.A. Wickham, supra*.

[9] 10 Mertens, Law of Federal Income Taxation, Sec. 55.27; *Jemison v. Comm'r*, (C.C.A. 5th, 1930) 45 F. 2d 4.

in such cases, it must appear that he conveyed complete and accurate information to his counsel.[20]

The fraud which incurs a civil penalty may be a less serious matter than that for which criminal prosecution is instituted, and there are many cases where the civil penalty alone is asserted. But the mere fact that criminal penalties are imposed does not relieve a taxpayer of the civil penalty. [fol. 677] The Supreme Court has held that the purpose of the civil fraud penalty is not punishment but is primarily to safeguard the revenue and to reimburse the Government for the heavy expense of investigation and for the loss resulting from the fraud.[21] Therefore, the taxpayer's right not to be subjected to double jeopardy is not violated by the imposition of the civil fraud penalty after a prosecution for tax evasion, whether the taxpayer was convicted[22] or acquitted of the crime.[23] Conversely, the imposition of the civil penalty is no barrier to subsequent criminal prosecution.[24]

An acquittal on the criminal charge of tax evasion is not *res adjudicata* with respect to the civil penalty, since the required degree of proof to sustain the criminal charge is greater than for the civil penalty, and the acquittal establishes, not that there was no fraud, but only that it was not proved beyond a reasonable doubt.[25] Further, such an acquittal is not, in a civil case, admissible evidence of the taxpayer's freedom from fraud.[26]

Whether a judgment of conviction for criminal evasion is admissible evidence of fraud in a civil tax case, is a matter

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[20] *E. M. Green* (1928) 11 B.T.A. 278; *Grover C. Blumer* (1931) 23 B.T.A. 1045.

[21] *Helvering* v. *Mitchell* (1938) 303 U.S. 391, 401.

[22] *Hanby* v. *Comm'r* (C.C.A. 4th, 1933) 67 F. 2d) 125.

[23] *Helvering* v. *Mitchell, supra.*

[24] *Slick* v. *United States* (C.C.A. 7th, 1924) 1 F. (2d) 897.

[25] *Helvering* v. *Mitchell, supra,* at page 397.

[26] *William R. Scharton* (1935) 32 B.T.A. 459, 464; *cf. Stone* v. *United States* (1897) 167 U.S. 178, 184.

upon which we have no case law. As a matter of principle, the weight of authority at the common law, as developed in our state jurisdictions, appears to be opposed to the use of criminal convictions as evidence in civil cases of the facts on which they were based.[27] On the other hand, a respected author has suggested, not only that a conviction should be admissible evidence, but, as well, that it should be considered *res adjudicata* in a civil action based upon the same facts, since the parties are the same and the facts would have been proved beyond a reasonable doubt in the criminal action.[28] The application of *res adjudicata* in the instant situation may be questioned, however, in that the issue involved in a criminal charge of "willfully" attempting to "evade and defeat" the tax may not be an issue identical with the civil "fraud" which must be proved in a penalty case.[29]

Whatever may be the law with respect to the admissibility and effect of a conviction, as such, there is no doubt that if the taxpayer entered a plea of guilty in the criminal case, it may be introduced in a civil case involving fraud penalties upon the theory that it constitutes an admission tending to prove, not the amount of the penalty or tax, but the fraudulent nature of his conduct.[30] On the other hand if a taxpayer pleads *nolo contendere* in the criminal case, it is an admission only for the purpose of that case, and may not be used against him in a civil proceeding involving the same act.[31]

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[27] 30 American Jurisprudence, Judgments secs. 290, 293; see annotations in 31 A.L.R. 262, 57 A.L.R. 594, 80 A.L.R. 1145, and 130 A.L.R. 690.

[28] 2 Freeman on Judgments (5th Ed.) sec. 657.

[29] *Helvering* v. *Mitchell*, *supra*, the question was expressly referred to at page 398, but a decision thereon was avoided. *Cf. United States* v. *Scharton* (1932) 285 U.S. 518.

[30] *Thomas J. McLaughlin* (1933) 26 B.T.A. 247, 249; *Agnassis Karger* (1938) 38 B.T.A. 209, 219; *Caldwell* v. *Commissioner* (C.C.A. 5th, 1943) 135 F. (2d) 488.

[31] *Barnsdall Refining Co.* v. *Birnamwood Oil Co.* (E.D. Wisc. 1940) 32 F. S. 308, 312; *Berlin* v. *United States* (C.C.A. 3rd, 1926)

[fol. 678] The difference between the civil and criminal penalties is emphasized by the difference in the procedure for their enforcement. The civil fraud penalty is assessed and collected in the same manner as a deficiency in tax, rather than through a criminal proceeding. The penalty is included in a deficiency notice, and if the taxpayer wishes to test its validity before payment he must do so in the Tax Court,[32] where, of course, the right of trial by jury and the other features of criminal procedure do not apply.[33] The taxpayer may not enjoin the collection of a civil fraud penalty duly assessed, any more than collection of the tax itself may be enjoined.[34] If he desires a jury trial on the issue of fraud, he must first pay the tax and penalty and then bring suit in the district court for refund.

The procedure respecting the civil penalty is also unlike a criminal proceeding in that it is not necessary for the Commissioner to prove fraud beyond a reasonable doubt.[35] In fact, prior to 1928, the Board of Tax Appeals attached to the fraud penalty the same presumption of correctness that attaches to other determinations of the Commissioner and placed the burden of disproving fraud on the taxpayer,[36] although there were decisions even under that prior law to the effect that fraud is never presumed and that the Commissioner had the burden of proving it.[37] The Revenue Act of 1928[38] expressly placed the burden of proof on the

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14 F.(2d) 497; *Fidelity-Phenix Fire Insurance Co. of New York* v. *Murphy* (Ala. 1936) 166 So. 604; *White et al.* v. *Creamer et al.* (Mass., 1900) 56 N.E. 832; *People* v. *Daibock* (N.Y. 1934) 191 N.E. 859. *Cf. Hudson et al.* v. *United States* (1926) 272 U.S. 451.

[32] *Gutterman Strauss Co.* (1924) 1 B.T.A. 243, 246.

[33] See *Helvering* v. *Mitchell*, *supra*, at 401-404.

[34] *McDowell* v. *Heinz* (W.D. Pa. 1925) 9 F.(2d) 120, aff'd (C.C.A. 3d, 1926) 15 F.(2d) 1015, cert. denied (1926) 273 U.S. 759.

[35] *Helvering* v. *Mitchell*, *supra*, at 403; *William E. Mitchell* (1939) 40 B.T.A. 424, 448.

[36] *Desmond's Inc.* (1929) 15 B.T.A. 738, 755.

[37] *Budd* v. *Comm'r* (C.C.A. 3d, 1930) 43 F.(2d) 509; *Jemison* v. *Comm'r* (C.C.A. 5th, 1930) 45 F.(2d) 4.

[38] Sec. 601; now Int. Rev. Code sec. 1112.

Commissioner "in any proceeding involving the issue whether the petitioner has been guilty of fraud with intent to evade tax." The cases hold that it is not enough for the Commissioner to prove fraud by a preponderance of the evidence. The evidence of fraud must be "clear and convincing." That requirement does not, of course, preclude establishing fraud by circumstantial evidence.[39] It is the duty of the court to draw all reasonable inferences from the facts which are proved;[40] and to resort to the entire record in determining fraud regardless of which party actually produced the evidence.[41]

The burden of proof which is thus placed on the Commissioner extends only to the issue of fraud, and the presence of a fraud issue does not affect the usual presumption that the amount of the tax was correctly determined.[42] Thus, if issue is joined and neither party introduces any proof, the tax will be sustained but the fraud penalty will be disallowed.[43]

An analysis of the Tax Court decisions for the fiscal years 1945 and 1946 indicates that during that period the Commissioner successfully sustained his burden of proof in two-thirds of the cases in which he asserted the fraud penalty. During the aforementioned period 21 decisions (four by published one-judge opinions, 17 by memorandum opinions) were rendered by the Tax Court, the Commissioner being successful in 14, and failing to sustain his burden in seven. As a matter of interest it might be noted [fol. 679] that on March 31, 1946 there were 155 protested

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[39] *Frank A. Maddas* (1939) 40 B.T.A. 572, 578; *Frank J. Moore* (1938) 37 B.T.A. 378, 383.

[40] *National City Bank of New York* (1937) 35 B.T.A. 975, 988.

[41] *McClure* v. *United States* (Ct. Cl. 1943) 48 F. Supp. 531, 534.

[42] *L. Schepp Company, supra*, page 440.

[43] *John Kehoe* (1936) 34 B.T.A. 59, 70, aff'd (1940) 309 U.S. 277; *Snell Isle, Inc.* v. *Comm'r* (C.C.A. 5th, 1937) 90 F. 2d 481, cert. denied (1937) 302 U.S. 734. But *cf. Kastel* v. *Comm'r* (C.C.A. 5th, 1943) 136 F. 2d 530.

[44] *Miller-Pocohontas Coal Co.* (1931) 21 B.T.A. 1360.

cases involving fraud penalties pending in the Offices of the Internal Revenue Agents in Charge, the greater number being in the New York Division (49 cases) and the Pacific Division (27 cases).

If the taxpayer pays the tax and penalty and sues for its recovery, it is an open question whether the burden of proof on the issue of fraud is on him or on the Government. Since the taxpayer is the plaintiff seeking to get the fraud penalty back and since there is no statute expressly shifting the burden of proof as there is for Tax Court cases, it might be argued that the burden of disproving fraud is on the taxpayer. There is authority to the contrary, however.[45]

The character of the civil fraud penalty as a remedial device rather than a punishment is further illustrated by the fact that the liability for the penalty survives the death of the taxpayer and may be assessed against and collected from his estate.[46]

In appropriate cases, the Commissioner is authorized to compromise fraud penalties, with the approval of the Secretary of the Treasury, the Under Secretary or an Assistant Secretary. If the case has been referred to the Department of Justice, that power is exercised by the Attorney General.[47] Since the penalty is an integral part of the tax liability, a compromise of the penalty is deemed a settlement of the tax, and no refund of the tax may subsequently be obtained.[48]

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[45] *Duffin* v. *Lucas* (C.C.A. 6th, 1932) 55 F.(2d) 786, 798; *Hood* v. *Allen* (M.D. Ga. 1941) 29 A.F.T.R. 1375. *Cf. Vitelli & Son* v. *United States* (1919) 250 U.S. 355, 358; *Budd* v. *Comm'r* (C.C.A. 3d, 1930) 43 F.(2d) 509, 512.

[46] G.C.M. 22326, 1940-2, C.B. 159; Mim. Coll. No. 6123 (March 11, 1947).

[47] Int. Rev. Code sec. 3761; and see 31 Ops. Atty. Gen. 459 construing the compromise power to include settlement of penalties.

[48] *Ely & Walker Dry Goods Co.* v. *United States* (C.C.A. 8th, 1929) 34 F.(2d) 429; *Nelson-Wiggen Piano Co.* v. *United States* (C.C.A. 7th, 1936) 84 F.(2d) 47; *Schneider* v. *United States* (C.C.A. 6th, 1941) 119 F.(2d) 215; (1933) 38 Ops. Atty. Gen. 94, 96-97.

In conclusion, it should be pointed out that a taxpayer can always minimize the possibility of the Commissioner asserting fraud penalties. A complete disclosure in his return of all the facts, even though the taxpayer vigorously denies any tax responsibility, will go far toward assuring, if not guaranteeing, that no penalties will be asserted or sustained.[49] This is not to say that every failure to disclose justifies the imputation of fraud, for the questioned item may be of highly doubtful character which the taxpayer failed to report after being advised by reputable counsel that there is no tax liability. In such a case, it may be that the failure to disclose is not attributable to fraudulent intent.[50] However, the only reasonably safe method is for a taxpayer at all times to cut "square corners" with his Government, and to submit with his return full information concerning any doubtful item.

[fol. 680]

TREASURY DEPARTMENT
Bureau of Internal Revenue
Washington 25, D. C.

Revision of Address by J. P. Wenchel entitled "Tax Frauds and Voluntary Disclosures".

The following corrections and insertions should be made in the text of the address prepared by J. P. Wenchel, Chief Counsel of the Bureau of Internal Revenue, for delivery before the Tax Executives Institute in New York on May 14, 1947:

1. On Page 3 [now printed p. 607, l. 6], the first line should read "their estates were".

2. On Page 3 [now printed p. 607, l. 12], after the first paragraph, which closes with the words "take it with them," insert the following:

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[49] *Lorenzo C. Dilks* (1929) 15 B.T.A. 1294, aff'd. (C.C.A. 7th, 1934) 69 F.(2d) 1002; *Dorie Apartment Co.* (1937) 32 B.T.A. 1187, aff'd (C.C.A. 6th, 1938) 94 F.(2d) 895.

[50] *Jemison* v. *Comm'r, supra.*

"One thing the tax-evader seems never able to appreciate is that in these days of high taxes there is always someone comparing his income with his own and wondering how he's able to live as well as he does and still pay his taxes. He doesn't seem to know that there has been on the statute books since 1867 a provision of law which authorizes the Commissioner to pay for information leading to the discovery and recovery of additional revenue. The Act of March 4, 1867, now carried in the Internal Revenue Code as Section 3792, encourages informers, and the informer runs the complete scale from disgruntled employees to discarded wives. One of the most interesting cases of the latter sort occurred recently when a wife appeared before the Chief of the Intelligence Unit of the Bureau and stated that she wished to inform against her husband for evading his income tax. She was asked whether she had anything more than a suspicion and she replied that she certainly did. Upon being pressed, she stated he had cheated on everything else, including her, and that it was inconceivable that he had not cheated the Government. Another interesting case occurred when one of two partners, having had a falling out over some finances, appeared before a special agent and stated he wished to inform against his partner who had been evading his income tax. Upon questioning, the revenue agent quickly discovered that not only had the partner informed against evaded his income tax but the informer had also evaded his, and, furthermore, that both had connived together to evade the income tax of the partnership."

3. On Page 4 [now printed p. 609, last 3 ll.], the last full paragraph should be corrected to read as follows:

"Turning to the civil sanctions for the protection of the revenues, although a voluntary disclosure may relieve a taxpayer of criminal prosecution, it will not necessarily relieve him of the civil penalty for fraud.[1] The Department may insist upon the maximum • • •

(resuming the remainder of the paragraph as originally written)."

4. On Page 4 [now printed p. 610, ff. l. 4], after the last full paragraph, which closes with the words "added to the tax.", insert the following:

[fol. 681] "This is true even for the year 1942, the year of forgiveness, under Section 6 of the Current Tax Payment Act of 1943 and no part of the tax for 1942 is forgiven. Under Section 6 of the Current Tax Payment Act of 1943, it is expressly provided that the discharge of the tax for the year 1942 as therein provided shall not be applicable in any case in which the taxpayer is convicted of any criminal offense with respect to the tax for 1942 or in which additions to the tax for the taxable year 1942 are applicable by reason of fraud. Therefore, the practical result of fraud in the year 1942 return brings about not merely a 50 per cent penalty but a penalty in astronomical figures."

[fol. 682]

DEFENDANTS' EXHIBIT 97

[Handwritten notation—√ Speeches Made by Employees of the Treasury Department]

May 2, 1947

OFFICERS AND EMPLOYEES OF THE
INTERNAL REVENUE SERVICE CONCERNED:

Your attention is called to an address to be given by J. P. Wenchel Chief Counsel of the Bureau, on the criminal and civil aspects of fraud under the Internal Revenue Code on May 14, 1947, before the annual dinner of the Tax Executives Institute in New York City. The first fifteen minutes of this address (from 10 to 10:15 p.m., Eastern Daylight Saving Time) will be broadcast by the Mutual Broadcasting System and will deal particularly with a clarification of the Treasury's policy on voluntary disclosures. Efforts will be made, of course, to supply the full text of this address to field offices on or about the date of its delivery, but this notice is being sent so that those who desire to do so may arrange to hear the broadcast and advise the bar and public of the broadcast.

Stewart Berkshire,
Acting Commissioner.

[fol. 684]

DEFENDANTS' EXHIBIT 98.

UNITED STATES OF AMERICA
(Emblem)
TREASURY DEPARTMENT
WASHINGTON

MAR 31 1953.
(Date)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I certify that the annexed is a true copy of Com. Mimeograph Coll. No. 4201, R. A. No. 722, dated July 2, 1934, directed to Officials of the Bureau of Internal Revenue, Collectors of Internal Revenue, Internal Revenue Agents in Charge and Other Employees Concerned, approved June 27, 1934 on file in this Department.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

(Seal)

/s/ D. L. SIEGRIST

D. L. Siegrist
Head, Audit Service Branch
Audit Division
Bureau of Internal Revenue

Treasury Department—Stock Form 2247 (Rev. Nov. 1949)

[fol. 685]

TREASURY DEPARTMENT
Office of Commissioner of Internal Revenue
Washington, D. C.

JUL -2 1934

Com. Mimeograph
Coll. No. 4201
R.A. No. 722

Confidential

Statement of Policy with Respect to the Compromise of Taxes, Interest, and Penalties.

OFFICIALS OF THE BUREAU OF INTERNAL REVENUE,
COLLECTORS OF INTERNAL REVENUE,
INTERNAL REVENUE AGENTS IN CHARGE,
AND OTHER EMPLOYEES CONCERNED:

General

1. The following instructions will supersede all instructions previously issued on the subjects covered by this mimeograph. Collectors of Internal Revenue and Internal Revenue Agents in Charge will follow Com. Mimeograph, Coll. No. 3832, R.A. No. 568, as amended, with respect to the procurement of information relating to the assets and liabilities of the proponent and the submission of reports covering offers in compromise.

2. When the words "tax" and "taxes" are used in this mimeograph they should be construed as including interest and penalties which are added to the tax and become collectible as a part thereof, unless the contrary appears from the context.

3. The Treasury Department is in receipt of an opinion from the Attorney General in which it is held that tax, interest, and ad valorem penalties constitute one liability, which make a "case" arising under the internal revenue laws within the meaning of section 3229 of the Revised Statutes, and that there is nothing in the law to justify a

division of such "case" for compromise purposes. The conclusion was also reached by the Attorney General that section 3229 of the Revised Statutes does not confer power upon administrative officers to compromise tax, interest, or penalty where liability is clear and there is no doubt as to the ability of the Government to collect. To compromise there must be room for mutual concessions involving either doubt as to liability or doubt as to collectibility. The opinion overrules prior opinions and interpretative instructions thereunder in so far as they attempt to recognize as a contributing cause for compromise grounds of equity, or public policy peculiar to a particular case, individual hardships, or difficulties as to payments, a distinction between solvent and insolvent taxpayers and similar matters where they do not have a direct bearing on liability or collectibility; and in so far as they permit the compromising of tax, penalty and interest separately.

[fol. 686] 4. The Attorney General's opinion does not specify the quality or degree of doubt which will make compromise permissible as a matter of law. However, the Treasury Department does not propose to compromise when there is merely a possibility of doubt. The doubt as to liability or collectibility must be supported by evidence and must be substantial in character, and when such doubt exists, the amount acceptable will depend upon the degree of doubt found in the particular case.

PART I—TAX CASES

5. (A) Interest and all penalties which are added to the tax and become collectible as a part thereof will not be compromised separately from the tax from which they arise, since the tax, interest and penalties constitute one case arising under the internal revenue laws within the meaning of section 3229 of the Revised Statutes. The taxpayer in proposing a compromise should word the offer in every case to satisfy all tax, interest, and penalties for the taxable period or periods involved. Each offer submitted which involves interest or penalties should be examined in order to determine that it is so worded as to settle the full tax,

interest, and penalties due from each taxable period. Before any offer is recommended by Bureau officials for acceptance all audits should be completed for the periods involved and it should be certain that there are no additional taxes due for the reason that the acceptance of an offer will, in the absence of fraud, close the case for the taxable periods under consideration.

(B) When a tax is involved in a suit in court any offer in compromise in relation thereto should be submitted separately from and not in connection with any offer in relation to other taxes, since such an offer must be handled by the Department of Justice whereas other offers are handled by the Treasury Department.

6. While no definite amounts can be stipulated, Collectors should make every endeavor to secure offers representing the taxpayer's maximum capacity to pay. Attempts by taxpayers to submit offers in compromise in nominal amounts disproportionate to the entire liability, or which do not justify the cost of investigation and handling in the Bureau, should be discouraged. Offers of $100.00 or less shall be transmitted for consideration on the basis of the information furnished by the taxpayer and the Collector's recommendations thereon, together with any information that he may have without special investigation.

7. Offers in compromise which are more than nominal in amount and proportionate to the entire liability will be considered on the basis of the taxpayers' financial condition at the time of submission of the offers, taking into consideration reasonable future probabilities of their earnings and of appreciation of their assets.

8. Transferee liabilities for the payment of taxes will, so far as compromise is concerned, be treated the same as tax liabilities.

9. Where social, athletic, or sporting clubs or organizations are unable to collect taxes on dues and fees imposed by section 501 of the Revenue Act of 1926, as amended, it is customary to obtain a list of the membership for the purpose of entering direct assessments against individual

[fol. 687] members of the taxes which should have been paid. If such clubs or organizations prefer to satisfy the taxes of their members instead of having the Government proceed with direct assessments, offers in compromise will be considered in such cases provided the amounts submitted are equal to the full sums which the Government could collect if direct assessments were made. The financial condition of such club or organization or the ability to pay an offer equal to such taxes does not enter into the question of compromise.

25 Per Cent Penalties

10. (A) The provisions of sections 1302 and 1303, Part III, Title V, Pages 68 and 69, of the Internal Revenue Manual, which for convenience are quoted in full below, shall remain in force as to the disposition of this penalty.

"Sec. 1302. The penalty of 25 per cent will be asserted in all cases where a return is not filed within the time prescribed by law and regulations unless a reasonable cause for delinquency is clearly established by the taxpayer. The following, when clearly established, may be accepted as reasonable causes:

1. Where the return was mailed in time (whether or not the envelope containing the return had sufficient postage) to reach the collector's office, in normal course of mails, within the legal period. If the due date falls on Sunday or a legal holiday, the following business day is within the legal period.

2. Where return was filed within the legal period but in the wrong collection district, or directly in the commissioner's office.

3. Where the delay or failure to file was due to erroneous information given the taxpayer by an internal revenue officer or employee.

4. Where delay was caused by death or serious illness of the taxpayer or by serious illness in his immediate family.

5. Where the delay was caused by unavoidable absence of the taxpayer.

6. Where delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.

7. Where the taxpayer, prior to the time for filing return, made application to the collector's office for proper blanks and these were not furnished him in sufficient time to permit the executed return to be filed on or before its due date.

8. Where the taxpayer proves that he personally visited the office of the collector or deputy collector before the expiration of the time within which to file return for the purpose of securing information or aid to properly make out his return, and through no fault of his own was unable to see the representatives of the bureau.

"Sec. 1303. The foregoing applies to all periodic returns required by internal revenue law and regulations. Where other grounds are alleged as reasonable cause for delay, a statement of the facts and an explanation of the delinquent taxpayer should be forwarded to the commissioner to determine whether the 25 per cent penalty should be assessed."

[fol. 688] (B) In those cases where the penalty is listed for assessment by the Collector, and no reasonable cause exists to explain the delinquency, any offer in compromise will be rejected unless it equals the full amount collectible from the taxpayer's assets. Where reasonable cause does exist the penalty will be abated rather than compromised.

(C) If there is substantial doubt whether the taxpayer is legally liable for the penalty or whether the penalty is collectible, the case may be compromised, the amount acceptable depending upon the degree of doubt found in the particular case.

5 Per Cent Penalty for Negligence (Income Tax Cases)
(Section 293, Revenue Act of 1932)

11. This liability will be compromised only where there is substantial doubt as to liability or collectibility.

5 Per Cent Penalty and 12 Per Cent Interest
(Section 3184, Revised Statutes)

Note: 5 per cent penalty not applicable to income taxes imposed by the Revenue Act of 1921 or by subsequent acts, or to deficiencies in income and profits taxes determined by the Commissioner to be due under the Revenue Acts of 1916, 1917, 1918 and 1921 assessed on or after June 2, 1924, the date of the enactment of the Revenue Act of 1924.

12. Except as set out in the above note, the 5 per cent penalty and 12 per cent interest imposed by section 3184 of the Revised Statutes for failure to pay an assessment within 10 days from the date of notice and demand automatically become a part of the tax and are collectible as such. This liability is clearly established under the statute and will not be compromised except where there is substantial doubt as to collectibility. However, if there is substantial doubt as to the legality of the tax upon which such penalty and interest are computed, consideration may be given to an offer in compromise.

6 Per Cent Interest

13. Offers in compromise of 6 per cent interest will not be accepted on grounds of so-called equity or hardship, but will be accepted only if there is substantial doubt as to the legality or collectibility of the claim.

12 Per Cent Interest

14. (A) Offers to compromise 12 per cent interest involving income, estate, and gift taxes should be recommended for acceptance only in case there is substantial doubt as to the liability or the collectibility. Collectors should discourage the submission of offers by taxpayers who admit that the 12 per cent interest is legally due and collectible but ask for compromise because of peculiar hardships to the particular taxpayer or because the negligence or delinquency was not deliberate or has not caused the Government expense in collecting the tax, such reasons not constituting sufficient grounds for compromise.

[fol. 689] (B) In the case of the 12 per cent interest imposed under the provisions of sections 502(d) and 602 of the Revenue Act of 1926, sections 615(b), 626(b), and 771 of the Revenue Act of 1932, and sections 213 and 215(d) of the National Industrial Recovery Act, applying respectively to admissions and dues, pistols and revolvers, soft drinks, various sales by manufacturers, various miscellaneous excise taxes, tax on dividends and capital stock taxes, as well as processing taxes imposed under Title I of the Agricultural Adjustment Act, offers in compromise may not be favorably considered unless substantial doubt exists as to the collectibility of such interest or as to the legality of the tax on which such interest is computed.

50 Per Cent Fraud Penalty

15. No offer will be accepted in compromise of a fraud penalty unless there is substantial doubt of the ability of the Government to sustain the charge of fraud upon a trial or to collect the penalty if the charge is sustained.

No Separate Compromise of Penalties or Interest

16. Neither the penalties nor the interest specified in Paragraphs 10 to 15, inclusive, will be compromised separate and apart from the taxes in connection with which the penalties and interest were incurred.

PART II—FRAUD AND CRIMINAL CASES

17. Where a violation of the internal revenue laws is deliberate and with intent to defraud, and is discovered through internal revenue officers, or is disclosed by the taxpayer after the Bureau has initiated an investigation, the criminal liability will in no case be compromised by the Treasury Department. Prosecution will be recommended or not, solely on the basis of whether the evidence is sufficient to afford reasonable grounds for the belief that a conviction can be secured.

18. In cases in which taxpayers make voluntary disclosures of intentional evasions before investigation by the Bureau has been initiated, the Bureau will not recommend

criminal prosecution, but will impose the maximum civil penalties unless there is substantial doubt as to collectibility.

19. In all cases not covered by Paragraphs 17 and 18 in which there is evidence of intentional evasion, the Bureau will impose the maximum civil penalties unless there is substantial doubt as to liability or collectibility.

20. The provisions of Paragraphs 15, 17, 18 and 19 of this mimeograph are applicable to fraud in whatever class of case found, including fraud in connection with pretended or fictitious sales of stocks or securities commonly referred to as "tax-sales" cases.

[fol. 690] *PART III—SPECIFIC PENALTIES*

21. (A) Specific penalties are not collectible as a part of taxes and therefore if compromisable at all are compromisable alone and not in connection with taxes, ad valorem penalties, or interest.

(B) Every offer to compromise a specific penalty should be carefully examined. Where the statute provides the penalty for a mere act of omission or commission, without regard to whether the offense was knowingly or willfully committed, there are three questions in respect of which doubt may arise as to the propriety of prosecution in the courts. These questions are (1) whether the expense of a trial would justify prosecution, (2) whether the Government could obtain a conviction in court, having in mind the uncertainty of criminal prosecutions for this character of offense, and (3) whether a larger fine than the amount offered would be imposed by the court upon conviction. If the statute provides for a penalty only upon conviction of having knowingly or willfully committed the offense, no liability is incurred unless there is some indication that the act was willful or with knowledge that it violated the law. If the circumstances indicate that the offense was probably knowingly or willfully committed, some doubt may arise as to the sufficiency of the evidence on this point, as well as on one or more of the three points arising in cases of a mere failure to comply with the law.

(C) If substantial doubt exists as to any of the foregoing grounds, the case is compromisable and the following procedure will govern in respect to the suggestion of offers:

Documentary Stamp Tax Violations
(Section 802, Revenue Act of 1926)

22. (A) In the ordinary case if there was no negligence on the part of a taxpayer with respect to the stamping of instruments and the amount of the delinquency involved is not in excess of $10.00, no attempt shall be made to impose the specific penalty and the taxpayer will not be advised of his privilege of submitting an offer in compromise. The amount of the tax due will, however, be collected. If negligence existed or if the tax exceeds $10.00, the specific penalty should be asserted and the taxpayer should be advised of his privilege of submitting an offer in compromise in lieu of the specific penalty.

(B) In advising taxpayers of the privilege of submitting offers in compromise in respect to documentary stamp tax violations, Collectors should for the first offense suggest an offer of not less than $5.00 where the value of the stamps does not exceed $50.00, and $5.00 for each additional $50.00 tax involved, or fraction thereof, until the amount of the offer to be submitted reaches $100.00. When the offer exceeds $100.00 or there is a second offense involving the same type of transaction, the case is not considered within the routine class and should be reported to the Bureau for special consideration.

[fol. 691]

Special or Occupational Tax Violations

23. (A) The mere carrying on of a business as a manufacturer of or wholesale or retail dealer in oleomargarine, adulterated, process, or renovated butter, filled cheese, or manufacturer of mixed flour, for which a return on Form 11 is required, without the payment of the special tax when due, renders the taxpayer liable to a specific penalty imposed by law. Taxpayers should be advised of their privilege of submitting offers in compromise in lieu of the specific

penalties, and field officers should, where there is no apparent attempt to defraud, endeavor to obtain such offers at the time that the tax and 25 per cent ad valorem penalty are paid.

(B) In advising taxpayers of the privilege of submitting offers in compromise of the specific penalty for failure to pay special or occupational taxes when due, Collectors should suggest an offer of at least $5.00 to retail dealers in uncolored oleomargarine, and $10.00 to retail dealers in colored oleomargarine for each delinquent period or for each place of business for which the delinquent taxpayer failed to pay his tax. Where a taxpayer is subsequently delinquent the case is not considered within the routine class and should be reported to the Bureau for special consideration. In all cases where a manufacturer or wholesale dealer in colored or uncolored oleomargarine, adulterated, process or renovated butter, filled cheese, or manufacturer of mixed flour, fails to pay special tax when due, the case is not considered within the routine class and should be reported to the Bureau for special consideration.

Failure to Post Special Tax Stamp

24. (A) Section 3239 of the Revised Statutes provides that every person engaged in any business who is thereby made liable to a special tax is required to keep conspicuously posted in his establishment all stamps denoting the payment of said special tax. Failure to do so renders the person liable to a penalty equal to the special tax imposed upon his business, but in no case shall said penalty be less than $10.00. If the failure to comply with this section of the law is due to willful neglect or refusal, the penalty is double the amount prescribed.

(B) In canvassing their districts for delinquents, should Collectors discover any violations of the foregoing section of the statutes, they may suggest offers in compromise of not less than $10.00 for the first offense in lieu of the specific penalty incurred. Subsequent offenses should be referred to the Bureau.

Failure to Use Properly-Printed Tickets

25. Section 500(d) of the Revenue Act of 1926 imposes a specific penalty of not more than $100.00 for mere failure [fol. 692] to use properly prepared tickets of admission to places of amusement. As a general rule offers in compromise of not less than $25.00 for the first offense will be suggested in lieu of this specific penalty. Subsequent offenses will be reported to the Bureau.

Failure to Register as a Soft Drink Manufacturer

26. Under the provisions of section 615(c) of the Revenue Act of 1932, each person required to pay any tax on soft drinks is required to procure and keep posted a certificate of registry, and failure to do so renders such person liable to a penalty of not more than $1,000.00 for each offense. Upon the discovery of violations of this section of the law, Collectors should suggest the submission of an offer of not less than $5.00 for the first offense. Subsequent offenses will be reported to the Bureau.

Capital Stock Tax Violations

27. There is no specific penalty imposed by law for failure to pay capital stock tax on time unless the violation is willful, in which event the penalties prescribed in section 1114 of the Revenue Act of 1926 are applicable. Whether or not the violation is willful depends upon the circumstances in each particular case. In those cases in which it is alleged that the failure to comply with the law was willful, a detailed statement of the facts and evidence upon which such allegation is based should be transmitted to the Bureau for determination whether criminal proceedings should be instituted. Collectors should refrain from advising a taxpayer of his privilege of submitting an offer in compromise for mere failure to pay capital stock tax when due.

Delinquent Special Tax Upon Use of Pleasure Boats

28. The provisions of the foregoing paragraph relating to the assertion of specific penalties for failure to pay capi-

tal stock tax on time are equally applicable in the case of mere failure to pay special tax when due upon the use of pleasure boats, where no evidence of willful failure is available. No offers in compromise should be suggested in such delinquencies. Where there is evidence of willful failure the facts should be reported to the Bureau.

Collecting Amounts in Guise of Tax

29. Section 1123 of the Revenue Act of 1926 imposes a fine of not more than $1,000.00 or imprisonment of not exceeding one year, or both, for representing as a tax an amount known to be in excess of the tax imposed or for representing in the guise of tax an amount known to be [fol. 693] not imposed as tax under authority of the United States on the sale or lease of any article. This section applies only to the taxes imposed by Title VI of the Revenue Act of 1926 and to the taxes imposed by Title IV of the Revenue Act of 1932, as amended. Each such illegal representation constitutes a separate violation. Prosecution will be had in all such cases where sufficient evidence of willful violation exists. Where substantial doubt exists as to the evidence necessary to convict, offers in compromise will be considered. In no event will an offer be accepted in an amount less than the excess amount collected except where there is doubt as to the collectibility of this amount.

Estate Tax Violations

30. Whenever a taxpayer is delinquent in filing notice or return he should be instructed to prepare and file in duplicate an affidavit setting forth in detail the reasons for the delinquency. One copy of this affidavit should be forwarded by the Collector to the Bureau where it will be placed on file until the return is audited and reviewed after such field investigation as may be deemed necessary. In connection with the audit the Bureau will determine whether a penalty should be asserted; and if so, the closing letter will state the amount which will be considered as an offer in compromise, if the facts justify the acceptance of such an offer. In view of the fact that the assertion of the penalty in this class of cases is not determined until final audit and

review, an offer in compromise on Form 656 should not be obtained, nor, in advance of final audit, should the taxpayer be instructed to tender any amount in lieu of penalties.

Gift Tax Violations

31. The procedure followed in respect to estate tax violations is equally applicable to gift tax delinquencies, and Collectors should promptly obtain from all donors who are late in filing gift tax returns affidavits in duplicate setting forth in detail the reasons for failure to comply with the law within the time prescribed. Collectors will likewise refrain from obtaining offers in compromise in gift tax cases until after the returns are audited by the Bureau and consideration given the facts with a view to determining whether such offers should be suggested.

Tobacco Tax Violations

32. The number of specific penalties imposed by the statutes for failure on the part of tobacco manufacturers and dealers to do the things required by law or for doing the things forbidden by law are numerous and greatly vary in amounts of fines imposed upon conviction and no arbitrary schedules of offers in compromise have been adopted in adjusting such violations. Most of these administrative requirements are contained in the early Revised Statutes [fol. 694] and manufacturers and dealers in leaf tobacco engaging in business are expected to thoroughly familiarize themselves with such laws and regulations. The amount of the offer cannot be stipulated in these cases since such offers depend largely upon the circumstances surrounding the violation and the flagrancy of the case. In no instance, however, should Collectors suggest offers of less than $10.00 for the first offense. Subsequent offenses should be reported to the Bureau.

Intoxicating Liquor Law Violations

33. (A) The carrying on of the business of a distiller, brewer, winemaker, manufacturer of stills, rectifier, wholesale or retail liquor dealer, and wholesale or retail dealer

in malt liquors, renders such persons subject to numerous administrative provisions of the Revised Statutes in respect to the conduct of such occupations. Such persons are required under the law to comply with various statutes and they are forbidden by law from engaging in irregularities contrary to the statutes. The specific penalties and the amounts of the fines imposed upon conviction greatly vary and in compromising such liabilities no amounts can be specified. Such offers depend largely upon the circumstances surrounding the violation and the flagrancy of the cases; however, Collectors will in no instance suggest offers of less than $10.00 for the first offense. Subsequent offenses should be reported to the Bureau.

(B) The provisions of Paragraph 23(B) of this mimeograph, relating to special or occupational tax violations incurred by retail dealers in uncolored oleomargarine should be followed with regard to extending to manufacturers of stills, rectifiers, brewers, wholesale and retail liquor dealers, and wholesale and retail dealers in malt liquors the privilege of submitting offers in compromise of at least $5.00 for the first offense for each delinquent period or for each place of business for which the delinquent taxpayer failed to pay his tax. Subsequent offenses should be reported to the Bureau.

Miscellaneous Violations

34. Various other violations of stamp tax and regulatory provisions of the statutes relating to oleomargarine, adulterated, process, or renovated butter, filled cheese, mixed flour, white phosphorus matches, and manufacturers of playing cards are often discovered by investigating officers. In such instances Collectors will forward to the Bureau a complete statement of facts surrounding these violations of law in order that appropriate instructions may be issued looking to the proper adjustment of such cases.

Waiving Offers in Compromise in Lieu of Specific Penalties

35. In cases of failure to pay special taxes, the specific penalties (which are not assessable) and ad valorem pen- [fol. 695] alties (which are assessable) will be treated inde-

pendently and should not in any case be confused. In the following cases the possibility of convictions would be so doubtful that no offer in compromise of specific penalties should be suggested:

(a) Where after an honest effort a taxpayer was unable to obtain from the Collector or his duly authorized representative, information necessary to the filing of a timely or correct return and/or payment of the required amount of tax;

(b) Where a taxpayer received erroneous information from the Collector or his duly authorized representative;

(c) Where a taxpayer's case has been submitted to the Bureau for ruling;

(d) Where the delinquent voluntarily paid the tax without any prior investigation or notice from the Collector's office.

In such cases, where the taxes and ad valorem penalties are posted on the assessment lists, Collectors will enter appropriate notations in the "Remarks" column opposite the entries of such items in order that the cases may be closed without further action with regard to the specific penalties.

36. Inquiries concerning policies outlined under "General" or "Part II" should refer to the number of this mimeograph and to the symbols GC. Inquiries concerning "Part I" should refer to the number of this mimeograph and to the symbols IT:C:P, MT:ST, MT:PT, or AT:C&A, according to whether the tax involved is assessed on the Income Tax, Miscellaneous Tax, Processing Tax, or Distilled Spirits assessment lists, respectively. All questions relating to "Part III" should refer to the number of this mimeograph and to the symbols MT:ST, except those involving paragraph 33, which should refer to AT:C&A.

/s/ GUY T. HELVERING

GUY T. HELVERING
Commissioner.

Approved: /s/ H. MORGENTHAU
Secretary of the Treasury.

[Handwritten notation—6/26/34 Approved H O. Should have detailed index added.—J A M R H J B H B H O W M. C A D H E L J D F G P K L S C A R M.]

[fol. 696]

DEFENDANTS' EXHIBIT 99

Subpoena Duces Tecum — Case No: 52 CR 143

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To PENICK AND FORD, LTD., INC.
420 Lexington Ave. New York, New York

—*GREETING:*

WE COMMAND YOU, that all business and excuses being laid aside, you and each of you attend before the Honorable GUNNAR H. NORDBYE one of the Judges of the United States District Court for said District, on the 6th day of April, A.D. 1953, at 10:00 o'clock in the forenoon in the United States Court House in Chicago, in said District, to testify and give evidence in a certain cause now pending and undetermined in said Court, wherein THE UNITED STATES OF AMERICA is Plaintiff and THE SHOTWELL MANUFACTURING COMPANY, et al., are Defendants, on the part of said defendants. And that you also diligently and carefully search for, examine, and inquire after and bring with you, and produce at the time and place aforesaid, all books, records, accounts, statements, invoices, correspondence and memoranda reflecting in any way transactions between you and the following

named persons, companies, concerns, and corporations during the years 1943 to 1947 inclusive:

1) David G. Lubben
2) Micheal Cohen
3) David G. Lubben Company
4) David G. Lubben Associates
5) Eatsum Food Products Company, a sole Proprietorship
6) Eatsum Food Products Company, a limited partnership
7) General Confections, Inc.
8) Reserve Trading Corporation

Together with all agreements and contracts made between you and any of the above named persons, companies, concerns, and corporations, or memoranda thereof; having to do with the procurement of corn, the processing or refining of corn, and/or the sale of such processed or refined corn; including any and all memoranda or records of railroad car numbers, bills of lading, or other evidence of the receipt of corn by you, or the shipment by you of processed or refined corn,

And including also any books, records, correspondence, documents, papers, or memoranda in any way reflecting what raw materials received by you, or the products thereof processed or refined by you, were set aside or earmarked or designated in any way to be sold or shipped to, or sold or shipped for and on the order of, the above named people, persons, companies, concerns, or corporations, or any of them, during the years 1943 to 1947 inclusive, together with all copies, drafts, and vouchers relating to the said documents, and all other documents, letters, and paper writings whatsoever, that can or may afford any information or evidence in said cause. And

this you shall in nowise omit, under the penalty of the law in that case made and provided.

/s/ Roy H. Johnson
Clerk

By /s/ James F. Kuchta
Deputy Clerk

(Seal)

Dated: March 16, 1953

[fol. 697]

State of Illinois,
County of Cook, *ss.*:

George D. Sullivan, Jr., being first duly sworn on oath, deposes and says that he served the above and foregoing subpoena upon the within named Penick and Ford, Ltd., Inc., by delivering a copy to J. Max Widmer, President, on the 16th day of March, 1953, by reading the same to him, and at the same time delivering to him a true and correct copy thereof, together with the statutory witness fee and mileage in the sum of $150.00.

/s/ George D. Sullivan, Jr.

Subscribed and Sworn to Before
me this 27th day of March, 1953.

/s/ Alexander Neuman
Notary Public

(Seal)

[fol. 698]

DEFENDANTS' EXHIBIT 99A

Subpoena Duces Tecum — Case No. 52 CR 143

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To AMERICAN MAIZE PRODUCTS COMPANY
100 East 42nd Street
New York, New York

—GREETING:

WE COMMAND YOU, that all business and excuses being laid aside, you attend before the Honorable GUNNAR H. NORDBYE one of the Judges of the United States District Court for said District, on the 1st day of October, A. D. 1953, at 10:00 o'clock in the forenoon in the United States Court House in Chicago, in said District, to testify and give evidence in a certain cause now pending and undetermined in said Court, wherein THE UNITED STATES OF AMERICA is Plaintiff and THE SHOTWELL MANUFACTURING COMPANY, et al., are Defendants, on the part of said defendants. And that you also diligently and carefully search for, examine, and inquire after and bring with you, and produce at the time and place aforesaid, all books, records, accounts, statements, invoices, correspondence and memoranda reflecting in any way transactions between you and the following named persons, companies, concerns, and corporations during the years 1943 to 1947, inclusive: (1) David G. Lubben; (2) Michael Cohen; (3) David G. Lubben Company; (4) David G. Lubben Associates; (5) Eatsum Food Products Company, a sole proprietorship; (6) Eatsum Food Products Company, a limited partnership; (7) General Confections, Inc., (8) Reserve Trading Corporation; and (9) The Shotwell Manu-

facturing Company, together with all agreements and contracts made between you and any of the above-named persons, companies, concerns, and corporations, or memoranda thereof, having to do with the procurement of corn, the processing or refining of corn, and or the sale of such processed or refined corn; including any and all memoranda or records of railroad car numbers, bills of lading, or other evidence of the receipt of corn by you, or the shipment by you of processed or refined corn.

And including also any books, records, correspondence, documents, papers, or memoranda in any way reflecting what raw materials received by you, or the products thereof processed or refined by you, were set aside or ear-marked or designated in any way to be sold or shipped to, or sold or shipped for and on the order of, the above-named people persons, companies, concerns, or corporations, or any of them, during the years 1943 to 1947, inclusive, including notes, memoranda and records, if any, made and maintained by or in the custody of agents and not included in your regular corporate records, together with all copies, drafts, and vouchers relating to the said documents. And this you shall in nowise omit, under the penalty of the law in that case made and provided.

/s/ Roy H. Johnson
Clerk

By /s/ James F. Kuchta
Deputy Clerk

(Seal)

Vincent O'Brien
105 South LaSalle St.
Chicago 3, Illinois

Dated: August 24, 1953.

[fol. 700]

THE UNITED STATES OF AMERICA, Plaintiff,

against

THE SHOTWELL MANUFACTURING COMPANY, et al.,
Defendants.

STATE OF NEW YORK, COUNTY OF NEW YORK, ss:

Milton Schwartz, being duly sworn, deposes and says: I am over 21 years of age, not a party to this action, and reside in the City and State of New York. That on the 16th day of September, 1953, at 100 East 42nd Street, Manhattan, New York City, I served the witness subpoena annexed hereto, upon AMERICAN MAIZE PRODUCTS COMPANY, a domestic corporation the witness therein named, by delivering to and leaving personally with, Brainerd R. Taylor, its Vice-President, a true copy of each thereof and at the same time and place paid the witness a fee of $150.00, as required by law for his attendance.

DEPONENT further says: that at the time of such service I knew the said corporation so served as aforesaid to be the same corporation mentioned and described in said witness subpoena as the witness therein, and knew the said Brainerd R. Taylor, to be such officer thereof.

/s/ MILTON SCHWARTZ

Sworn to before me this
16th day of September, 1953.

FRANCIS C. OCONNELL
Commissioner of Deeds, City of New York
New York County Clerk's No. 4
My Commission expires March 14, 1954

[fol. 701]

DEFENDANTS' EXHIBIT 99B

Subpoena Duces Tecum Case No. 52 CR 143

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To CORN PRODUCTS REFINING COMPANY
and Mr. L. K. Edmondson
33 North LaSalle Street, Chicago, Illinois

—GREETING:

WE COMMAND YOU, that all business and excuses being laid aside, you attend before the Honorable GUNNAR H. NORDBYE one of the Judges of the United States District Court for said District, on October 1, A. D. 1953, at 10:00 o'clock in the forenoon in the United States Court House in Chicago, in said District, to testify and give evidence in a certain cause now pending and undetermined in said Court; wherein THE UNITED STATES OF AMERICA is Plaintiff and THE SHOTWELL MANUFACTURING COMPANY, et al., are Defendants, on the part of said defendants. And that you also diligently and carefully search for, examine, and inquire after and bring with you, and produce at the time and place aforesaid, all books, records, accounts, statements, invoices, correspondence and memoranda reflecting in any way transactions between you and the following named persons, companies, concerns, and corporations during the years 1943 to 1947, inclusive: (1) David G. Lubben; (2) Michael Cohen; (3) David G. Lubben Company; (4) David G. Lubben Associates; (5) Eatsum Food Products Co., a sole proprietorship; (6) Eatsum Food Products Co., a limited partnership; (7) General Confections, Inc., (8) Reserve Trading Corporation; and (9) The Shotwell Manufacturing

Company, a corporation together with all agreements and contracts made between you and any of the above-named persons, companies, concerns, and corporations, or memoranda thereof; having to do with the procurement of corn, the processing or refining of corn, and/or the sale of such processed or refined corn; including any and all memoranda or records of railroad car numbers, bills of lading, or other evidence of the receipt of corn by you, or the shipment by you of processed or refined corn.

And including also any books, records, correspondence, documents, papers, or memoranda in any way reflecting what raw materials received by you, or the products thereof processed or refined by you, were set aside or ear-marked or designated in any way to be sold or shipped to, or sold or shipped for and on the order of, the above-named people, persons, companies, concerns, or corporation, or any of them, during the years 1943 to 1947, inclusive, including notes, memoranda and records, if any, made and maintained by or in the custody of agents and not included in your regular corporate records, together with all copies, drafts, and vouchers relating to the said documents. And this you shall in nowise omit, under the penalty of the law in that case made and provided.

/s/ ROY H. JOHNSON
Clerk

By /s/ JAMES F. KUCHTA
Deputy Clerk

(Seal)

Vincent O'Brien
105 So. LaSalle St., Chicago
Tel. FRanklin 2-4000
Attorney for defendants

DATED: August 24, 1953

[fol. 702]

State of Illinois,
County of Cook, ss.:

Being duly sworn, on my oath I, Sidney Sherman, depose and state that on the 28th day of August A. D. 1953 I served the within writ on the within named Corn Products Refining Co and Mr L. K. Edmondson and delivered to the within named M. L. Edmondson, registered agent of the within named Corn Products Refining Co. a true copy thereof with two witness fees of $4.15 each, one for himself and one for the aforesaid company (5'8—thin—grey hair—age 62)

/s/ Sidney Sherman

Served by
La Salle Process Servers

Subscribed and sworn to
before me this 28th day
of August A. D. 1953

/s/ Herbert J. Weber
Notary Public

[fol. 703]

DEFENDANTS' EXHIBIT 99C

Subpoena Duces Tecum Case No. 52 CR 143

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To THE HUBINGER COMPANY
601 Main Street
Keokuk, Iowa

—GREETING:

WE COMMAND YOU, that all business and excuses being laid aside, you attend before the Honorable GUNNAR H. NORDBYE one of the Judges of the United States District Court for said District, on the 5th day of October, A. D. 1953, at 10:00 o'clock in the forenoon in the United States Court House in Chicago, in said District, to testify and give evidence in a certain cause now pending and undetermined in said Court, wherein THE UNITED STATES OF AMERICA is Plaintiff and THE SHOTWELL MANUFACTURING COMPANY, et al., are Defendants, on the part of said defendants. And that you also diligently and carefully search for, examine, and inquire after and bring with you, and produce at the time and place aforesaid, all books, records, accounts, statements, invoices, correspondence and memoranda reflecting in any way transactions between you and the following named persons, companies, concerns, and corporations during the years 1943 to 1947, inclusive: (1) David G. Lubben; (2) Michael Cohen; (3) David G. Lubben Company; (4) David G. Lubben Associates; (5) Eatsum Food Products Company, a sole proprietorship; (6) Eatsum Food Products Company, a limited partnership; (7) General Confections, Inc., (8) Reserve Trading Corporation; and (9) The Shotwell Manufacturing

Company, a corporation; together with all agreements and contracts made between you and any of the above-named persons, companies, concerns, and corporations, or memoranda thereof; having to do with the procurement of corn, the processing or refining of corn, and/or the sale of such processed or refined corn; including any and all memoranda or records of railroad car numbers, bills of lading, or other evidence of the receipt of corn by you, or the shipment by you of processed or refined corn.

And including also any books, records, correspondence, documents, papers, or memoranda in any way reflecting what raw materials received by you, or the products thereof processed or refined by you, were set aside or earmarked or designated in any way to be sold or shipped to, or sold or shipped for and on the order of, the above-named people, persons, companies, concerns, or corporations, or any of them, during the years 1943 to 1947, inclusive. And this you shall in nowise omit, under the penalty of the law in that case made and provided.

/s/ RAY H. JOHNSON
Clerk

By /s/ WILLIAM E. KUEEV, JR.
Deputy Clerk

(Seal)

Vincent O'Brien
105 South LaSalle St.
Chicago 3, Illinois
Attorney for Defendants

DATED: Sept. 10, 1953.

[fol. 704]

STATE OF IOWA)
)
LEE COUNTY)

RETURN OF
SUBPOENA DUCES TECUM

I, Robert B. Dickey, being first duly sworn state that I received the within Subpoena Duces Tecum on this 16th. day of September, 1953, and I certify that on the 16th. day of September, 1953, I served the same on the Hubinger Company by delivering a copy thereof to the President of the said Company, Robert S. Fisher, in the City of Keokuk Lee County, State of Iowa. The said Robert S. Fisher at that time waiving the reading of the same.

I further state that at the time of said service I tendered to the said Robert S. Fisher the sum of $40.00 as the fees for one day's attendance and the mileage as allowed by law.

/s/ ROBERT B. DICKEY
Robert B. Dickey

Subscribed and sworn to before me by Robert B. Dickey, this 16th. day of September, 1953.

/s/ CHARLES B. CHAPPELL
Notary Public in and for
Lee County, Iowa.

[fol. 705]

DEFENDANTS' EXHIBIT 100A

Union Sales Corp.

1941

Corn Syrup

Item No.	Quantity (lbs)	Amount
	1990379	5429936
1466 (10)	240	670
1441	95060	265217
1504 (11)	420	1172
1554	95580	266668
1586 (12)	340	949
	2199969	5759030
	(341)	
	12	
	2199640	

UNION SALES CORP.

1941

CORN SYRUP

ITEM NO.	QUANTITY (LBS)	AMOUNT
66 ①	95100	[illegible]
83 ①	94840	[illegible]
84 ①	100	[illegible]
101 ①	94740	[illegible]
107 ①	95140	[illegible]
141 ①	95040	[illegible]
111 ①	160	[illegible]
167 ②	95240	[illegible]
197 ①	100	[illegible]
193 ①	160	[illegible]
111 ①	100	[illegible]
1471 ②	379	[illegible]
308 ②	94940	[illegible]
309 ③	100	[illegible]
378 ③	94380	[illegible]
391 ①	100	[illegible]
398 ③	95240	[illegible]
444 ④	94760	[illegible]
479 ④	100	[illegible]
484 ④	100	[illegible]
484 ④	100	[illegible]
413 ④	440	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]

[fol. 709]

DEFENDANTS' EXHIBIT 100C

A. E. STALEY MFG. CO.

1941

CORN SYRUP

ITEM NO.	QUANTITY (LBS)	AMOUNT
304	95660	247759
355	95920	248433
373	650	1684
392	600	1554
599	95700	247863
722	344	891
778	95800	248122
862	240	622
947	96360	259408
1042	95320	265943
1043	240	646
1211	120	335
1264	14570	40650
1333	96200	268398
1358	14640	40846
1418	657	1833
	647319	1859657

[fol. 711]

DEFENDANTS' EXHIBIT 100D

6

PENICK + FORD LTD.

1941

CORN SYRUP

ITEM NO.		QUANTITY (LBS)		AMOUNT
44	(1)	N 96000	N	248640
43	(1)	N 95920	N	248433
96	(1)	N 1000	N	2590
97	(1)	N 560	N	1450
187	(2)	N 95960	N	248536
246		680		1761
553	(5)	N 96040	N	248744
589	(5)	N 700	N	1813
911	(8)	N 95900	N	257971
984	(8)	N 580	N	1560
985	(9)	N 96000	N	256240
1022	(9)	N 400	N	1076
1208	(10)	N 96000	N	267840
1257	(10)	N 460	N	1283
1498	(11)	N 96100	N	268119
1551		431		1203
		763109		2033787

[fol. 713]

DEFENDANTS' EXHIBIT 100E

CORN PRODUCTS SALES CO.

1941

CORN SYRUP

ITEM NO.	QUANTITY (LBS)	AMOUNT	
17 (1)	N 95680	N 247811	
72 (1)	X 119	N 3077	* Dbd to 1188 lbs
347 (3)	N 95780	N 248070	
424 (3)	N 1188	N 3077	
495 (4)	N 95880	N 248329	
850 (8)	N 95860	N 257863	
894 (8)	N 440	N 1141	Dbd to 424 lbs
1169 (10)	N 95520	N 266501	
1177 (10)	N 17680	N 49327	
1231 (10)	N 100	N 279	
1563 (12)	N 95240	N 265720	
	519793	1576047	
1532 (4)	N 532	N 1378	
	589261	1574669	
	1069		
	16		
	588208		

[fol. 715]

DEFENDANTS' EXHIBIT 100F

ANHEUSER-BUSCH INC.

1941

CORN SYRUP

ITEM NO	QUANTITY (LBS)	AMOUNT

[fol. 717]

DEFENDANTS' EXHIBIT 100G

American Maize Prod. Co.

1941

Corn Syrup

Item No.	Quantity (lbs)	Amount
489 (4)	96520	249987
526 (4)	580	1502
674 (6)	96140	249003
694 (6)	540	1399
1370 (11)	96820	270128
1378 (11)	720	2009
1485 (12)	96480	269179
1528 (12)	940	2571
	383180	1030816

In Transit Dec 31, 1941
No. 18172 GATX 4278 Rec'd 1/3/42
96440 279 269068
(12 T) " "

[fol. 719]

DEFENDANTS' EXHIBIT 100H

RECIPITULATION OF CORN SYRUP PURCHASES
THE SHOTWELL MFG CO.
1941

VENDOR		QUANTITY (LBS)	AMOUNT	
American Maize Products Co	✓	383480	10308 16	R
Anheuser-Busch Inc	✓	386873	10407 99	R
Corn Products Sales Co	✓	589461 (less 1063)	15746 69	R
Lenick + Ford Ltd	✓	763109	20337 87	R
A.E. Staley Mfg Co	✓	697319	18596 57	R
Union Sales Corp	✓	4129969 (less 3[illegible])	57590 30	R
		4799711	134987 58	
		1382		
		4498329		
Jim Francis 12/31/42		96440	269068	
		5094769		

[fol. 721]

DEFENDANTS' EXHIBIT 100 I

A. E. STALEY MFG. CO.

1941

STARCH PURCHASES

ITEM No.	QUANTITY CLBS		AMOUNT
1159	(10) M 10500	M	399 00
1212	(10) M 10500	M	399 00
	21000		798 00

[fol. 723]

DEFENDANTS' EXHIBIT 100J

CORN PRODUCTS SALES CO. (2)

1941

STARH PURCHASES

ITEM No.	QUANTITY (LBS)	AMOUNT	
Forward	215593	764635	
1178 (10/11)	N 10000	N 36000	
1179 (10/11)	N 3750	N 16313	
1203 (10/14)	N 10000	N 36000	
1232 (10/15)	N 10000	N 36000	
1405 (11/19)	N 10000	N 36000	
1532	X 5000	X 26100	Out. Dec. above
1533 (12/19)	N 5000	N 18000	
	269343	969048	
539	X 300	X 1281	Dec. above
653 (6/9)	N 1875	N 7406	
1534	X 5000	X 26100	Dec above
540	X 532	X 1378	To cancel Chr. entd. above
	466450	9,504.51	

723

[fol. 727] DEFENDANTS' EXHIBIT 100L

CERTIFIED PRODUCTS CO.

1941

STARCH PURCHASES

ITEM No.	QUANTITY (LBS)	AMOUNT
449 ④	N 2380	N 8449
605 ⑥	N 42000	N 147000
869 ⑦	N 7000	N 25200
914 ⑧	N 7000	N 25900
916 ⑧	N 7000	N 25900
972 ⑨	N 7000	N 25900
1011 ⑨	N 7000	N 25900
1053 ⑨	N 7000	N 25900
1262 ⑩	N 1968	N 7448
1341 ⑪	N 4900	N 18620
1512 ⑫	N 7000	N 26600
1566 ⑫	N 7000	N 26600
	114240	415317

[fol. 729]

DEFENDANTS' EXHIBIT 100M

AMERICAN MAIZE PRODUCTS CO.

1941

STARCH PURCHASES

ITEM No.	QUANTITY CWT.	AMOUNT
48 @	N 8000	N 28000
49 @	N 40000	N 140000
446 @	P 14930	N 52430
~~607~~	~~12000~~	~~112000~~ Certified Products
	62930	220430

729

CORN PRODUCTS SALES CO.

1941

STARCH PURCHASES

ITEM No.	QUANTITY (LBS)	AMOUNT	
16 (1/2)	N 3125	N 12031	
33 (1/2)	N 5000	N 17000	
42 (1/2)	N 3125	N 12031	
73 (1/2)	N 3125	N 12031	
89 (1/2)	N 5000	N 17000	
90 (1/2)	N 3125	N 12031	
147 (2/2)	N 3750	N 14438	
175 (2/2)	N 5000	N 17000	
176 (2/2)	N 3500	N 12250	
203 (2/2)	N 5000	N 17000	
204 (2/2)	N 3750	N 14438	
205 (2/2)	N 56000	N 196000	⊗
232 (2/2)	N 5000	N 17000	
292 (2/2)	N 5000	N 17000	
346 (2/2)	N 1250	N 4813	
348 (2/2)	N 5000	N 17000	
382 (2/2)	N 1875	N 7219	
391 (2/2)	N 5000	N 17000	
423 (2/2)	N 1875	N 7031	
425 (2/2)	N 5000	N 17000	
494 (2/2)	N 3125	N 11719	
497 (2/2)	5000	N 17000	
535 (2/11)	N 1400	N 4900	
536 (2/11)	N 2520	N 8820	
537 (2/11)	N 3080	N 10780	
538 (2/11)	N 6300	N 22050	⊗
539	X 300	X 1281	
540	X 532	X 1378	
566 (2/11)	N 5000	N 17000	
594 (2/11)	N 5000	N 17500	
684 (2/11)	N 5000	N 17500	
753 (2/11)	N 7500	N 26250	
849 (2/11)	N 5000	N 18000	
893 (2/11)	N 5000	N 18000	
917 (2/11)	N 5000	N 18000	
973 (2/11)	N 10000	N 36000	
1012 (2/11)	N 7500	N 27000	
1054 (2/11)	N 7500	N 27000	
1146 (2/11)	N 7500	N 27000	
1147 (2/11)	N 7500	N 27000	
Forward	215593	764635	

1947 ✓ Cont. - b.c. below

1534 ✓ Cont. - Dec at end

DEFENDANTS' EXHIBIT 102

Shetland Manufacturing Co

Corn Syrup Purchases

1941 - 1945 - 1946

Defendants 102

		Total		American Maize Products Co		Anheuser-Busch, Inc.		Corn Products Refg. Co.		Hubinger Co		Penick & Ford, Ltd. Inc.
		Pounds	Amount	Pounds	Amount	Pounds	Amount	Pounds	Amount	Pounds	Amount	Pounds
1941	Jan	758,787	19,639.79					94,487	2,447.34			190,916
	Feb	387,960	9,913.49			97,440	2,535.70					55,000
	Mar	444,387	11,286.98					94,597	2,449.93			
	Apr	597,108	14,817.58	95,940	2,468.37	96,460	2,489.31	95,348	2,469.51			
	May	380,336	9,850.70									55,000
	June	380,400	9,857.35	95,600	2,476.04							
	July	94,840	2,551.19									
	Aug	381,796	10,256.84					95,436	2,567.44			55,000
	Sept	487,501	13,284.13			97,300	2,651.42					95,000
	Oct	478,400	13,558.11					100,100	2,837.13			55,000
	Nov	396,865	11,424.50	95,796	2,758.11	95,673	2,754.24					99,000
	Dec	394,486	11,671.51	95,955	2,839.27			94,296	2,789.28			
Total		4,782,860	135,984.31	479,291	13,598.76	386,873	10,980.41	804,885	22,945.51			1,036,916
1945	Jan	857,386	24,036.92					190,800	5,358.52	95,181	2,675.00	221,191
	Feb	903,587	25,206.42	95,740	2,685.42			94,560	2,654.71	317,400	8,904.16	110,361
	Mar	668,010	18,790.02					95,200	2,681.89	189,500	5,315.58	85,961
	Apr	476,119	13,402.84	95,300	2,681.89	59,111	1,663.58	96,960	2,728.76	190,960	5,384.58	95,961
	May	495,290	13,967.99					95,000	2,675.50	94,680	2,654.71	95,961
	June	1,158,741	32,498.08							190,660	5,335.68	95,961
	July	852,142	23,961.96					95,500	2,685.85	190,560	5,316.63	95,961
	Aug	11,803,380	332,000.00	95,740	2,685.42							95,961
	Sept	2,900,224	77,113.33	95,740	2,685.42			95,000	2,675.00	94,680	2,654.71	95,961
	Oct	2,816,192	79,306.49	94,540	2,651.01					94,560	2,654.71	95,961
	Nov	2,899,741	81,600.41					95,100	2,678.82	188,780	5,315.58	95,961
	Dec	2,890,681	81,289.75					95,000	2,675.00	94,560	2,654.71	95,961
Total		25,250,681	710,698.84	476,320	13,398.75	59,111	1,663.58	951,220	26,779.51	1,890,781	53,259.61	1,190,961
1946	Jan	2,090,165	59,139.41	94,540	2,675.00	94,560	2,675.00	283,200	8,010.56	189,080	5,349.20	190,961
	Feb	2,087,165	59,139.41									190,961
	Mar	2,860,360	81,258.94					284,600	8,084.21	284,600	8,084.21	190,961
	Apr	2,814,669	79,976.02	94,540	2,675.00	94,560	2,675.00	284,600	8,084.21	189,080	5,349.20	190,961
	May	2,814,669	79,976.02	94,540	2,675.00	94,560	2,675.00	284,600	8,084.21	189,080	5,349.20	190,961
	June	2,814,669	79,976.02	94,540	2,675.00	94,560	2,675.00	284,600	8,084.21	189,080	5,349.20	190,961
	July											

	Amherst - Pounds	Amherst - Amount	Com Products Del. Co - Pounds	Com Products Del. Co - Amount	Hilton Hotel Co - Pounds	Hilton Hotel Co - Amount	Pacific Coast Co., Incorporated - Pounds	Pacific Coast Co., Incorporated - Amount	[illegible] - Pounds	[illegible] Co - Amount	Union - Pounds	Union - Amount	Sales Corp - Pounds	Sales Corp - Amount

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Alabama Manufacturing Co.
Corn Sugar Purchases
1941 - 1945 - 1946

103 (c)

	Total		American Products Co		Corn Products Sales Co	
	Pounds	Amount	Pounds	Amount	Pounds	Amount
1941 - Jan	33900	1749.47			33900	1749.47
Feb	26900	1036.73			26900	1036.73
Mar	21600	987.78			21600	987.78
Apr	71600	2776.52			71600	2776.52
May	300	12.81			300	12.81
Jun	-	-				
Jul	60000	2044.92			60000	2044.92
Aug	200	8.48			200	8.48
Sep	15200	704.04	10000	450.72	5200	253.32
Oct	20000	575.25	20000	575.25	-	-
Nov	13500	709.90			13500	709.90
Dec	23500	1136.90	10000	484.72	13500	652.18
Total	289700	12412.88	40000	1956.69	248600	10456.19
1942 - Jan	23800	1153.78	6000	291.72	17800	862.06
Feb	16100	817.89			16100	817.89
Mar	22500	1056.11	5800	274.82	16700	781.29
Apr	21700	1060.71	5000	243.75	16700	816.96
May	101700	4405.41	5000	243.75	96700	4161.66
Jun	200400	10453.01	5000	243.75	195400	10209.26
Jul	210200	9253.00	5000	243.75	205200	9009.25
Aug	17700	858.89	1000	48.75	16700	810.14
Sep	15400	788.64	5000	243.75	10500	544.89
Oct	8500	384.75	2000	97.50	6500	287.25
Nov	11000	496.95	2000	97.50	9000	399.45
Dec	20500	1180.41	5000	243.75	15500	936.66
Total	511000	24110.46	50000	2438.97	460900	21671.49
1943 - Jan	16500	837.31	1500	73.13	15000	764.18
Feb						
Mar	50000	2548.82			50000	2548.82
Apr	60000	3058.59			60000	3058.59
May						
Jun	16000	1131.06	10000	656.19	6000	474.87
Jul						
Aug	20200	849.91			20200	849.91
Sep	500	32.19	500	32.19		
Oct	67500	2837.25	500	32.19	60000	2805.06
Nov	65000	3011.08	5000	321.19	60000	2689.89
Dec	50500	2390.85	5000	321.19	45500	2069.66
Total	376500	17551.94	50000	3436.06	326500	14115.88

Whitehall Manufacturing Co.

Boiling Starch Purchases

1941 - 1945 - 1946

	Total		American Maize Products Co		Certified Products Co		Corn Products Sales Co		The Hubinger Co.		National Products
	Pounds	Amount	Pounds	Amount	Pounds	Amount	Pounds	Amount	Pounds	Amount	Pounds
	70500	2501.24	41000	168.00			7500	31.28			
	95700	396.96					85000	352.75			
	15125	63.37					15125	63.37			
	39360	1381.29	10480	404.25	2380	89.48	22000	887.56			
	28000	1215.00			24000	1040.00	10000	435.00			
	6875	264.06					5000	192.50			
	19500	754.50			7000	270.50	12500	484.00			
	31000	1147.00			21000	777.00	10000	370.00			
	46000	1677.00			21000	777.00	25000	900.00			
	21310	1355.96			1960	124.76	19350	1231.20			
	14900	594.75			4900	195.61	10000	399.00			
	19000	704.00			14000	518.00	5000	185.00			
	467470	16659.91	9549	340.25	114380	4163.18	243541	8756.48			
	lb	$	lb	$	lb	$	lb	$	lb	$	lb
	76000	2736.00					10000	416.00			
	65000	2800.00					5000	208.00			
	5000	208.00					5000	208.00			
	131100	4654.05					90000	3008.00	60000	2190.00	
	150000	5340.00	60000	2190.00	239000	8729.50	10000	416.00			
	62500	2250.00					20000	832.00			
	65000	2800.00					5000	208.00			
	5000	208.00					5000	208.00			
	24868	891.36									
	60000	2052.00									
	65000	2800.00							60000	2190.00	20000
	5000	208.00									
	24868	891.36									
	60000	2052.00									
	65000	2800.00								

1941 - 1945 - 1946

	Total		American Maize Products Co		Corn Products Sales Co		Eureka Foods Co		W. P.
	Pounds	Amount	Pounds	Amount	Pounds	Amount	Pounds	Amount	
1941 Jan	-	-							
Feb	-	-							
Mar	-	-							
Apr	30100	90300	30100	90300					
May	-	-							
Jun	-	-							
Jul	-	-							
Aug	-	-							
Sep	-	-							
Oct	-	-							
Nov	-	-							
Dec	-	-							
Total	30100	90300	30100	90300					
1945 Jan	29000	114470			5000	20150			
Feb	25000	98750			15000	59450			
Mar	10000	39300							
Apr	22500	88675			5000	19650			
May	20000	78600							
Jun	5000	19650			5000	19650			
Jul	-	-							
Aug	10000	39300							
Sep	2500	10075	2500	10075					
Oct	8300	32799			3300	13149			
Nov	5000	19650			5000	19650			
Dec	-	-							
Total	137300	541269	2500	10075	38300	151699			
1946 Jan	30000	118400	5000	21950	10000	39300	[illegible]	19650	
Feb	10000	39300	-	-	-	-			
Mar	19500	77135	-	-	5000	20150			
Apr	18000	71320	-	-	10000	39300			
May	14600	61884	6600	29964	-	-			
Jun	13000	58140	5000	22700	-	-			
Jul	5000	35200	5000	35200	-	-			
Aug	30500	186395	2000	12440	10000	62200			
Sep	29500	178175	15000	91800	9000	55080			
Oct	68300	339315	-	-	60000	292200			
Nov	10000	44150			-	-			
Dec	15000	63600			-	-			
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]			

1 – 1946 – 1946

Amount	American Maize Products Co. Pounds	American Maize Products Co. Amount	Corn Products Sales Co. Pounds	Corn Products Sales Co. Amount	Emerson Foods Co. Pounds	Emerson Foods Co. Amount	Walter H. Johnson Co. Pounds	Walter H. Johnson Co. Amount	A. E. Staley Manufacturing Co. Pounds	A. E. Staley Manufacturing Co. Amount
–										
–										
–										
90300	30100	90300								
–										
–										
–										
–										
–										
–										
90300	30100	90300								
114470			5000	20150					27000	943
98750			15000	59450					10000	393
39300									10000	393
88675			5000	19650					17500	690
78600									20000	786
19650			5000	19650					–	–
–									–	–
39300									10000	393
10075	2500	10075							–	–
32764			3300	12964					5000	196
19650			5000	19650					–	–
–									–	–
349164	32600	100750	38300	151964					96500	3794
118400	5000	21150	10000	39300	5000	19650			10000	393
35300	–	–	–	–					10000	393
77135	–	–	5000	20150			5000	19650	9500	373
71370	–	–	10000	39800					8000	316
61884	6600	29962	–	–					8000	319
58140	5000	22700	–	–					8000	320
90450	5000	23300	–	–					–	–
186395	2000	12420	10000	39229					28500	1117
178175	15000	9180	5000	19650					9500	373
83935	–	–	10000	39800					12400	471
52140			–	–					10000	393
19650			–	–					5000	196
1436214	98600	412412	100000	398405	5000	19650	5000	19650	311000	12154

Shotwell Manufacturing Co.

1941 Corn Syrup Purchases

from

American Maize Products, Corn Products Sales, and Penick + Ford

	Total Pounds	Total Amount	American Maize Products Co Pounds	American Maize Products Co Amount	Corn Products Sales Co Pounds	Corn Products Sales Co Amount
Jan	284852	737767			94492	244734
Feb	95280	246775				
Mar	94592	244993			94592	244993
Apr	191208	495436	95940	243485	95348	246951
May	95340	246931				
Jun	95600	247604	95600	247604		
Jul	-	-				
Aug	190756	513133			95436	256722
Sep	95600	257164				
Oct	208640	582106			113100	315549
Nov	191769	535035	96100	268119		
Dec	287220	801396	191980	535676	95240	265720
Total	1830937	4908340	479620	1299884	588208	1574669

facturing Co

up Purchases

ducts Dales, and Penick + Ford

American Maize Products Co Pounds	American Maize Products Co Amount	Corn Products Dales Co Pounds	Corn Products Dales Co Amount	Penick + Ford, Ltd. Incorporated Pounds	Penick + Ford, Ltd. Incorporated Amount
		94492	244734	190360	493033
				95280	246775
		94592	244993		
95940	248485	95348	246951		
				95340	246931
95600	247604				
		95436	256722	95320	256411
				95600	257164
		113100	315549	95540	266557
96100	268119			95669	266916
191980	535676	95240	265720		
479620	1299884	588208	1574669	763109	2033787

[fol. 741]

DEFENDANTS' EXHIBIT 108

Statement of Wages Paid by Co-operating Packers, 1945-1946

	Total		American Maize Products Co.		Corn Products Refining Co.		H. Hulbinger & Co.		Penick & Ford, Inc.
	Pounds	Amount	Pounds	Amount	Pounds	Amount	Pounds	Amount	Pounds
1945- Jan.	851380	$ 6443 00			190800	$ 895 72	189560	$ 857 40	191880
Feb.	903587	$ 7905 06	95440	$ 958 37	95460	$ 949 71	317400	$ 834 52	110360
Mar.	668010	$ 6411 78			95200	$ 941 68	189500	$ 855 55	96380
Apr.	764140	$ 3611 92	191300	$ 911 17	96400	$ 978 76	190760	$ 894 48	95060
May	667463	$ 6250 [illegible]			95000	$ 935 50	94620	$ 761 [illegible]	96180
June	418480	4185 17					190660	$ 891 39	96460
July	761646	7174 58			96500	$ 981 85	290706	9437 13	96260
Aug.	387000	1180380	95640	$ 955 78					96260
Sept.	711433	$ 6030 06	46370	1479 20	95700	$ 957 13	94860	$ 931 17	95740
Oct.	647306	$ 6317 18	34540	1101 83			$ 3 [illegible] 1 [illegible]	[illegible]	95880
Nov.	414700	4668 [illegible]			95100	$ 938 [illegible]	188780	$ 833 30	95540
Dec.	570680	6340 00			94900	$ 937 41	190040	$ 872 [illegible]	96360
Total	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
1946- Jan.	591090	[illegible]	02950	[illegible]	01 [illegible]	[illegible]	02 [illegible]	[illegible]	[illegible]
Feb.	081215	0869 81					089681	11 [illegible]	[illegible]
Mar.	860398	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Apr.	664080	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
May	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
June	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
July	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Aug.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Sept.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Oct.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Nov.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Dec.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Total	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Statistical Summary of Regional Economic Indicators, 1947–1963

Year	Population	Annual Growth	Urban Share	Rural Share	Notes
1947	1,482,300	—	31.2%	68.8%	Baseline census
1948	1,509,750	1.85%	31.9%	68.1%	
1949	1,538,120	1.88%	32.7%	67.3%	
1950	1,571,400	2.16%	33.6%	66.4%	Boundary revision
1951	1,602,880	2.00%	34.4%	65.6%	
1952	1,633,560	1.91%	35.1%	64.9%	
1953	1,668,240	2.12%	36.0%	64.0%	
1954	1,701,900	2.02%	36.9%	63.1%	
1955	1,739,610	2.22%	37.9%	62.1%	
1956	1,781,340	2.40%	39.1%	60.9%	
1957	1,824,720	2.44%	40.3%	59.7%	
1958	1,871,460	2.56%	41.6%	58.4%	
1959	1,918,980	2.54%	42.9%	57.1%	
1960	1,968,300	2.57%	44.3%	55.7%	
1961	2,019,540	2.60%	45.8%	54.2%	
1962	2,072,760	2.64%	47.4%	52.6%	
1963	2,128,020	2.71%	49.1%	50.9%	

Source: Bureau of Regional Statistics, Annual Compendium, Table 4.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960. 12

No. ~~1228~~ 16

THE SHOTWELL MANUFACTURING COMPANY (RENAMED HOMAN MFG. CO., INC.), A CORPORATION, BYRON A. CAIN AND HAROLD E. SULLIVAN,

Petitioners,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT (AND APPENDICES).

GEORGE B. CHRISTENSEN,
HAROLD A. SMITH,
WILLIAM T. KIRBY,
NEAL J. MCAULIFFE,
Counsel for Petitioners.

WINSTON, STRAWN, SMITH & PATTERSON,
38 South Dearborn Street,
Chicago, Illinois,
Of Counsel.

THE DARNELL-TAYLOR PRINTING COMPANY, CHICAGO

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OCTOBER TERM, 1960.

No. .....

THE SHOTWELL MANUFACTURING COMPANY (RENAMED HOMAN MFG. CO., INC.), A CORPORATION, BYRON A. CAIN AND HAROLD E. SULLIVAN,

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THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The Shotwell Manufacturing Company (renamed Homan Mfg. Co., Inc.), Byron A. Cain, and Harold E. Sullivan pray that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Seventh Circuit entered in the above case on February 8, 1961.

OPINIONS BELOW.

Since the case has an unusual history, having been in this Court and remanded for additional proceedings, we list prior relevant opinions, as well as those sought to be reviewed:

Original opinion of the Court of Appeals reversing convictions because evidence was used against defendants, in violation of the 5th Amendment, which had been obtained from them by promises of immunity is reported at 225 F. 2d 394.

This Court's opinion remanding for further proceedings is reported at 355 U. S. 233.

The opinion of Judge Nordbye upon the remanded proceedings finding no perjury in the original disclosure testimony but resulting in re-sentences is not reported and is printed as Appendix A hereto.

The opinion of the Court of Appeals for the Seventh Circuit affirming the new judgments of conviction is reported at 287 F. 2d 667, and is printed as Appendix B, hereto.

The opinion of Judge Nordbye with respect to jury selection procedures is not reported and is printed as Appendix C hereto.

JURISDICTION.

The judgments of the Court of Appeals were entered February 8, 1961, and a petition for rehearing, filed within the period allowed by the Court of Appeals, was denied on April 11, 1961. On April 27, 1961, by order of Mr. Justice Clark, the time for filing a petition for certiorari on behalf of petitioners was extended to and including June 9, 1961. Jurisdiction of this Court is invoked under 28 U. S. C., Sec. 1254(1).

QUESTIONS PRESENTED.

Background:

Defendants, in early 1948, *it now has been found*, in reliance upon repeated promises of immunity from criminal prosecution extended to those who would voluntarily disclose income tax irregularities before Internal Revenue initiated investigation thereof, informed an appropriate

revenue official, Sauber, that Shotwell Manufacturing Company had received substantial unreported income from one Lubben in 1945 and 1946 of which it had no accurate records. At the request of Sauber and in reliance on the promised immunity, defendants thereupon prepared and submitted to the Treasury voluminous "recapitulations" or reconstructions of the Lubben account, which, to avoid controversy, were made to square with the "exaggerated" amounts Lubben claimed he had paid rather than to show the true approximate amounts which were materially lower.[1] These "recapitulations," which thus "admitted," *for purposes of gaining immunity and commencing a civil investigation*, receipt of more than had been paid, were received in evidence against defendants, when, despite the promised immunity, they were indicted and tried for evasion of a portion of Shotwell's taxes for 1945-6. Samples of some of the documents appear as Appendix D. They were used as affirmative evidence of the amount of gross income involved and were, as the Government asserted on the first appeal, one of the "two legs" on which the convictions depended. Defendants were held guilty.

In June 1955, the Court of Appeals discussed the facts fully and accurately and held (a) that although a timely voluntary disclosure had been made, the promised immunity from criminal prosecution could not be enforced judicially, but (b) evidence induced from defendants by such promises of immunity should have been suppressed.

The Government petitioned for certiorari in October 1955.

In December 1955 and June 1956 the Government, by letters to this Court, asked it to withhold action on the

1. The difference is now conceded by the trial judge to be close $150,000, see p. 12, *infra*; we contend it was even greater. Cf. 355 U. S. at 238, Note 10.

certiorari petition pending further investigation which it was asserted would show that no disclosure had been made until after Revenue had commenced investigation. In April 1956 this investigation was committed to a special grand jury.

A motion to remand was filed here in October 1956 by the Government on the general ground that the reinvestigation showed no disclosure had been made until long after defendants claimed. It was supported not by witness affidavits but principally by those of Lester Stein of the Treasury, and Vincent P. Russo, attorney in charge of the grand jury inquiry, purporting to recite facts developed in the reinvestigation. The Russo affidavit asserted (contrary to what has now been established, App. 1761), "* * * it appears that prior to June 21, 1948 * * * no disclosure, voluntary or otherwise, had been made."

However, the fact was the principal witnesses, Huebner, Graflund and Lima who ultimately were relied on by the Government and whose subsequent affidavits are digested by this Court's opinion in 355 U. S., had been interrogated repeatedly during the first half of 1956 and had testified at length before the new grand jury in July and August 1956. Their testimony *at that time*, as hereafter shown, was at wide variance with the theories suggested in the December 1955 letter to this Court, with the allegations of the Stein and Russo affidavits, and in large part extremely helpful to defendants. *The motion to remand concealed that fact and this evidence was suppressed.* This Court was given no inkling of it. (The facts came to light on the new hearing ordered by this Court when defendants insisted on production of witness statements under the rule of the *Jencks* case, and, after establishing remarkable impeachments thereby, insisted on production of the relevant grand jury minutes which displayed the sworn testimony the prosecution had concealed and proved further shocking impeachments and drastic changes of prosecution

testimony during the long period this Court had been induced to hold the case in abeyance.)

In December 1956, the Huebner affidavit, digested in this Court's opinion, and much stronger than his grand jury testimony, was filed; in August 1957 the Graflund affidavit, strikingly contrary to his grand jury testimony of a year earlier, was filed. No affidavit from Lima was filed although strong representations, contrary to Lima's 1956 grand jury evidence, were made as to what he would testify on a further hearing.[2]

At no time was this Court advised that these witnesses, wholly under Government control, had testified to the precise contrary of the affidavits ultimately filed here or that the story finally told in their affidavits *came into existence only during the period this Court was induced to hold the case so that the witnesses might be further interrogated.*

The Government's ultimate position in this Court was that defendants' contention that a voluntary disclosure had been made prior to June 21, 1948 was pure fabrication. If that position had been correct it would have followed (on counsels' incorrect theory that June 21, 1948 was the "timeliness" date for a voluntary disclosure), that defendants did not prepare and surrender incriminating material in reliance on the promises of immunity for defendants knew that once an investigation had been independently initiated by the Treasury the promise of immunity was no longer extended.

This Court, because of the Government's claim of perjury on behalf of defendants, held the case presented "an unusual question involving the integrity of a criminal trial in the federal courts" (355 U. S. at 234) and stated the dilemma that it was "plain that either the testimony in the District Court [that a disclosure had been made before June 21, 1948] was untrue or these affidavits [tendered in support of the motion to remand] themselves are the

2. See 355 U. S. at 240, Note 15.

product of fraud." By a divided opinion, the case was remanded to the District Court for further proceedings to determine the truth of the disclosure claim. The majority of the Court expressed the view that the constitutional question as to use of incriminating evidence obtained by promising immunity should not be passed on until the question as to possible "taint" of the record had been resolved (See 355 U. S. at 241 and Note 3).

Judge Nordbye, on remand found that the disclosure *was* made before investigation was initiated (App. 1761) and the Government concedes the disclosure was timely. (Ct. of Appeals decision, note 3.)

The following questions are presented:

1.

Whether the admission in evidence of documents and information furnished by petitioners in reliance on the Government's promise of immunity from prosecution violated petitioners' rights under the Fourth and Fifth Amendments and the common law rule excluding incriminating material induced by such promises?

2.

Whether criminal justice and the processes of this Court were abused and a fraud worked on the court by inducing it to delay action for nearly a year and ultimately to remand the case by the device of concealing that the witnesses whose affidavits were finally filed (and one from whom testimony was promised) had repeatedly sworn to the contrary before, or while, the motion to remand was pending and changed their testimony only after being subjected to repeated interrogations, "refresher courses" and other sophisticated forms of pressure by Government agents?

3.

Whether it was either a denial of due process or a violation of civilized standards of administration of justice for the District Court to re-enter judgments of conviction after the Court had found on the reopened hearing that the principal witness for the Government on the original jury trial (Lubben) had given seriously false testimony to the jury on a vital issue?

4.

Whether petitioners had to show they were "actually prejudiced" by illegal jury selection procedures utilized in selection of the arrays of both the indicting grand and the petit jury by which (a) jurors were selected from the private list specifically condemned in *Glasser* v. *U. S.*, 315 U. S. 60, as well as other private lists, and volunteers were accepted contrary to the Illinois statute, and (b) the Jury Commissioner delegated his non-delegable duty of selection of prospective jurors to an employee of a private corporation of which the Commissioner was president?

5.

Whether the jury could be instructed it might consider evidence against Sullivan which had been ruled inadmissible as to him and instructed that the disclosure was defective?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

Constitution of the United States, Amendments 4 and 5.

28 U. S. C. (1952 ed.) Secs. 1861, 1864 (Jurors).

Illinois Revised Statutes 1951, Chap. 78, Sec. 13 (Jurors).

(Texts are shown in Appendix H hereto.)

STATEMENT.[3]

The District Court's opinion is so discursive *as to the merits of the tax case*, that the salient result of the new hearing is obscured — the Government's own evidence showed that the disclosure, whether perfect or imperfect, had been made just as had originally been testified.

Neither the District Court nor the Court of Appeals opinions recite the facts as to how this Court's order of remandment was obtained—hence a longer "Statement" than is usually desirable is required. Neither addresses itself to the specific issues meticulously listed or classified in Justice Harlan's opinion at pages 239-240 of 355 U. S. And, as both opinions show, in becoming involved in the merits of the tax case and details of the former "voluntary disclosure policy", both courts lost sight of the larger constitutional question as to whether incriminating evidence obtained from a defendant under the inducement of promising him immunity may be used against him in a federal criminal trial.

No Perjury in Original Disclosure Testimony.

The District Court did not find that a syllable of perjury was given on the original proceeding as to when and how the disclosure was made; he found the disclosure *was* made, as defendants had claimed, before the Treasury commenced

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3. The record as certified by the Clerk of the Court of Appeals to this Court includes the following:

a. The printed record on the original appeal (terra cotta colored), which was reprinted by the Government in connection with its appeal in 355 U. S. 233. References to it will be shown as R. .....

b. A printed appendix received in evidence by the District Court in a proceeding entitled *Sullivan* v. *U. S. District Court*, which was accepted as part of the record here and which contains some of the evidence relating to jury selection procedures. References to it will be shown as S. .....

c. The printed appendix containing the testimony taken in the 1958-9 reopened proceeding before the District Court. References to it will be shown as App. .....

investigation. But he found it defective or "fraudulent" *because it did not square with what he believed to be the merits of the tax case.*

The new hearing, rather than being confined to examination of the charge that no disclosure had been made in early 1948, was permitted, over repeated objections (App. 195-6, 208, 263, 273-80, 303, 391-411, 543-7, 567, 573, 1028, 1781) to cover the entire alleged course of dealing between Lubben and Shotwell throughout 1944-5-6.[4] This was the merits of the case, went far beyond this Court's limited remandment and embraced fields of investigation which, if proper at all under the indictment, were only for a jury in a new trial. The prosecution endeavored to show that some of Lubben's black-market payments to Shotwell were not disbursed by it for corn but went to Cain and Sullivan personally. Whether the money actually was spent for corn or was disbursed as so-called "constructive dividends" would make no difference in Shotwell's taxes, for neither type of expenditure was recognized as deductible in 1948. In substance, on the reopened hearing Cain and Sullivan were put through a bench trial on an alleged crime for which they had not been indicted—personal tax evasion—and found guilty.

In opening up the entire case the Government showed that the original 1953 jury convictions had been obtained by monumental perjury by its star witness, Lubben, on

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4. Shortly after the order of remand the District Court expressed the remanded issue as follows:

> "Of course, the ultimate fact is, I take it, whether the voluntary disclosure was made in July or August of 1948 or whether it was made in March, 1948. That is, after all, the ultimate issue, is it not?" (App. 200.)

However, the District Court did not adhere to that view. The prosecutors took the position that they could question Huebner

> "• • • about *everything that happened in his transactions with Lubben.*" (App. 572.)

The trial court sustained that position and the hearing on remandment became, as the District Court's opinion clearly indicates, a virtual re-trial of the case on the merits.

whose testimony the jury verdicts depended. The District Court did not use the word "perjury" in describing Lubben's 1953 testimony but the more polite term, "exaggerated"; but the "exaggeration" was too great to be inadvertent. The District Court, in 1959, found that Lubben's testimony to the jury was not, as the District Court erroneously had believed in 1953, "sincere" and "truthful" (R. 3018), but was "exaggerated" (App. 1758) to the extent of approximately $132,000 on the gross amount involved (See p. 12, *infra*). It thus is now undisputed that defendants were convicted by the jury on materially false evidence — evidence which the Court specifically found that the jury in 1953 believed was true (R. 3073).

The trial court, in 1959, found in substance that although Lubben lied to the jury, nevertheless he still paid Shotwell more, *in the judge's 1959 estimation*, than Shotwell had expended in over-ceiling premiums for raw materials; the balance, whatever it might be, *the judge believed* was pocketed by Huebner, Sullivan and Cain. The defendants, in his view, were guilty of "fraud" because they did not disclose these alleged individual diversions when they made the disclosure on behalf of the corporation. "A dishonest and false disclosure [in the trial court's view] cannot be held to be a timely voluntary disclosure" (App. 1771). The disclosure was "dishonest" and "false", according to the trial court, even though timely and even though it revealed every dollar, indeed more, of gross income that Shotwell received and invited assessment on that basis, solely because it did not reveal the supposed facts that Huebner,[5] Cain and Sullivan each got money as "constructive dividends", al-

5. Huebner, plant manager, was the man who physically received most of Lubben's over-ceiling payments and who disbursed the funds for Shotwell's over-ceiling premium payments for corn. He admits that in the process he personally kept about $45,000. Some of this he claims was with the knowledge of Cain and Sullivan—some he admits he took secretly. He has been given probation.

though such facts (which Cain and Sullivan strongly deny as to themselves) would not have affected Shotwell's taxes.

Although the District Court finds defendants guilty of fraud; the "fraud" the District Court talks about *is as to what he believes were the merits of the tax case, and the duty he believes the individuals were under, on his view of the facts, to inform on themselves when making the disclosure on behalf of Shotwell. The District Court* DID NOT FIND *that the testimony of Busby, Sauber and defendant Cain in which this Court was so vitally interested was a perjurious fraud.*

Incriminating Material Which Was Surrendered Upon Promises of Immunity.

The Treasury's so-called "Voluntary Disclosure Policy," which promised immunity from criminal prosecution for those who would voluntarily disclose tax irregularities before independent investigation was initiated, was in force for many years prior to 1952 when it was abandoned. (See 355 U. S. 233, Note 2.) Statements of the Policy are appended hereto as Appendix F.

The method in which the disclosure was made is accurately summarized in the first Court of Appeals opinion herein: in brief, Shotwell's auditor, Busby, first went to Chief Deputy Collector Sauber and opened the matter without revealing the name of the taxpayer; in a short time he took Cain with him and revealed the name of the company; Sauber told them to assemble what information they could to construct an account of the over-ceiling transactions. (On remand Judge Nordbye held this was the precise fact. App. 1761.) By that time defendants were aware of three important facts: *first*, they could get no credit, or deduction, for money Shotwell had paid out in over-ceiling premiums for raw materials—Shotwell was going to be taxed on whatever the Treasury believed the

gross amount of Lubben's over-ceiling payments to it had been; *second*, Lubben had purported records which showed he had paid far more to Shotwell than was the case; *third*, in making its assessment, the Treasury would ascertain Lubben's version of the transactions. Accordingly, unless petitioners were willing to become involved in a controversy, which might become public, as to whether their version, or Lubben's, was correct as to the amount of their over-ceiling receipts, they had to place their figures in substantial agreement with Lubben's.

What Lubben's precise figures were has always been doubtful because his alleged records were incomplete and, *as established by Government witnesses on the remanded hearing*, had been "doctored" by one Tobias who, after leaving Lubben, *was hired by Internal Revenue and worked on this case* (App. 969). Government counsel asserted before Judge Nordbye that Lubben proved $454,000 on the jury trial for the years 1945-6. Judge Nordbye now finds Lubben's claims to the jury were "exaggerated" and that the probable amount was "between three and four hundred thousand dollars," including $28,000 for 1944. If one takes the median figure of $350,000 and subtracts the $28,000 for 1944 (which was not involved in the jury trial), it follows that Lubben "exaggerated" to the extent of some $132,000. By raising no controversy, in the disclosure, as to Lubben's "exaggerated" figures Shotwell charged itself with receiving a very large amount of "overages" that had not in fact been paid by Lubben. Government witnesses on the new hearing proved that "Cain said to put everything in those figures that he [Lubben] could say he paid us money on" (App. 797-800; 967-8, 1063); the purpose was to have Shotwell's recapitulations "tie into" and "jibe" with Lubben's papers (App. 1245-6). The photostat copies appearing as Appendix D show how the right hand columns purporting to show the overages, were stated on their face to be based on Lub-

ben's purported records. The result was that the "Receipts" shown for each year on the "Summary" sheet (the first photostat) were seriously overstated. As a consequence the *disbursements* were overstated *but the latter overstatement, as the law was then applied by the Treasury, was without tax significance.*

Despite the foregoing undisputed history, and the fact that these papers had been procured by promising immunity, they were received in evidence and were strongly relied on by the Government, *so far as their "receipts" portion is concerned, as being true and incriminating.*

These papers sealed petitioners' fates before the jury for they supported Lubben's false testimony as to the amount of gross income Shotwell had received, while petitioners could support only a portion of the disbursements shown thereon. Although Judge Nordbye finds that the *disbursement* portion of the papers, because *in part* fictitious, were prepared in "bad faith", he does not dispute that they were procured by promises of immunity.

The Steps Leading to the Reopened Hearing and Concealment of Evidence from This Court.

A Special Assistant to the Chief Counsel of Internal Revenue Service became concerned with this case in the spring of 1955 while it was pending in the Court of Appeals on the first appeal. Conferences within the Treasury "gave rise to the strong *suspicion* that the alleged disclosure *might not* have taken place in March, 1948." "Inspectors" were assigned to investigate (See Stein affidavit attached to Motion to Remand (Amended), p. 9, App. 198-9).

On November 8, 1955, Treasury inspectors interviewed Graflund, who, as Shotwell's comptroller in January 1948, had alerted its outside auditor, Busby, to the black-market transactions with the result that Busby promptly advised that a disclosure be made. Graflund, when re-interviewed

in November 1955 gave no information contrary to his original testimony or to the foregoing facts but volunteered that he felt he "owed the Department something" because he had not been indicted in 1952 along with the others (App. 1110-11). Revenue Agent Lima was reinterviewed on August 10, 1955 (App. 1418) and gave no evidence showing that a disclosure had not been made. Huebner, who ultimately went over to the Government, does not appear to have been contacted in 1955. Nevertheless, on December 1, 1955, Internal Revenue wrote to the Justice Department asserting that its investigation had developed "newly discovered evidence * * * *in direct conflict*, with the testimony of witnesses Busby and Sauber and the defendant Cain" as to the disclosure. If Internal Revenue had such evidence no one yet knows what it was because *no such evidence "in direct conflict" has yet seen the light of day*. On December 6 the Department of Justice transmitted that letter to the Clerk of this Court, requesting the Court to withhold action and promising a motion to remand. The Court withheld action.

On May 10, 1956, Graflund was further interrogated by Mr. Russo (in charge of the grand jury investigation) and assistants. Instead of the lurid story Graflund finally gave (August 17, 1957) in an affidavit for this Court to the effect that Busby knew nothing of the black-market transactions until *July* 1948, *Graflund, in May 1956, said he revealed the transactions to Busby on a train trip from New York in January 1948 and didn't "spare the horses in the telling"* (App. 1125-8). In August 1956 Graflund was taken before the grand jury and in exhaustive testimony that went entirely beyond Busby's fairly terse original evidence (R. 170, 211-2, 1827, 1829), repeatedly swore that he revealed the facts to Busby in the club car of the Twentieth Century Limited in *January*, 1948 (See Appendix E, *infra*). This fully supported the original testimony as to the disclosure and the subsequent slow process of assembling figures for reconstruction of the Lubben account.

Revenue Agent Lima was interrogated in at least 9 lengthy sessions between 1955 and 1957. Prior to filing of the motion to remand Lima was put through a 2 day session in Washington on August 9 and 10, 1955 (App. 1420); a session extending approximately a week in March or April 1956 (App. 1432); grand jury testimony on July 26, 1956 after several days of "refresher courses" (App. 1437); a lie detector test on October 4, 1956 (App. 1441); and more grand jury testimony on October 8, 1956 (App. 1464). In none of those sessions did Lima give any evidence that he had filled out and then destroyed a Revenue Agent's report or that he knew anything about a $20,000 proposed settlement (App. 1420, 1440, 1443-50, 1465-67, 1477-9) and in all of his statements, and his testimony on remand, admitted he got petitioners' papers as part of a voluntary disclosure. (This is contrary to the representations subsequently made here. See note 15, this Court's opinion.) On October 4, 1956, when subjected to the lie detector test, Lima told the operator he "had been interrogated so much and had given so many statements that [he] had trouble regalling what was in [his] mind and what [he] had learned from other sources or heard or had been asserted to [him]" (App. 1450-1, 1455-6). Lima was told it was possible the new grand jury might indict him and was worried that he might be fired (App. 1484, 1523-4, 1530).

During the summer of 1956 defendant Huebner was working secretly with the prosecutors and was interrogated "many, many times" (App. 715).[6] On August 26, 1956,

6. Huebner did not discharge his counsel of record for more than six months after he actually began "co-operating" with the prosecutors (App. 746). Not once before the masquerade was discovered did the prosecutors tell Huebner they couldn't deal with him behind the back of his attorney of record, or that "If all you are doing is telling the truth and being an honest citizen, you don't have to sneak around about it, you can tell Christensen, Cain, Sullivan and everybody else. You don't have to play a dual role." (App. 718, 743, 746.)

Huebner solemnly said he had no recollection of any asserted meeting at the Chicago Athletic Club supposedly to discuss the purchase of Lubben's company in order to get possession of his records (App. 854) as Huebner subsequently "remembered" in his affidavit of December 19, 1956 for this Court and as the Russo affidavit of September 19, 1956 told this Court had taken place.

Thus, in October 1956 when the motion to remand was filed, the reinvestigation had continued for a year and a half; six months of that time with the powerful aid of a grand jury. The Treasury had no real evidence to validate its ill-founded "suspicion" that the disclosure had not been made as originally testified to. The sworn evidence it had developed tending to verify the original disclosure testimony was withheld from this Court and the motion to remand was filed, backed by the hearsay affidavits of Stein and prosecutor Russo. No doubt the Solicitor General felt those affidavits were entitled to credence and was unaware of the suppressed testimony.

In the face of the suppressed testimony, and of the original sworn, unrecanted testimony of Busby, Sauber and defendant Cain, Mr. Russo represented in sweeping fashion,

> "From statements of fact within the personal knowledge of witnesses interviewed and interrogated by me, and from facts and circumstances already in the record, it appears that prior to June 21, 1948 * * * no disclosure, voluntary or otherwise, had been made by Busby and Cain to Sauber or to any other official or employee of the Revenue Service."

Meantime, while the matter continued to pend here, the witnesses were ceaselessly pursued, sometimes separately, sometimes in joint sessions which Lima characterized as "refresher courses" (App. 1382). Lubben was brought in from Puerto Rico for a joint session with them (App.

1205). To paraphrase from *McNabb* v. *U. S.*, 318 U. S. 332, 338, "It took [until February, 1957] to get a story that was satisfactory * * *."

The Importance of the Concealed Testimony and the Collapse of the Government's Remanded Case.

The matter can only be sketched in a petition for certiorari but this is clear:

Outstanding in the charges made to this Court was the charge that Shotwell's comptroller, Graflund, had not revealed the black-market facts to outside auditor Busby in January 1948 as Busby originally had testified but had done so only in late June 1948, after, so it was incorrectly asserted,[7] the Treasury had independently initiated investigation. *If* that charge was true, it meant that defendants' entire factual claim of a disclosure fell of its own weight, for defendants had always asserted this was the starting point; they had offered no other explanation of how they came to make the disclosure. On the other hand, if Graflund in fact did reveal the facts to Busby in January, the subsequent events, including Busby's advice to disclose, followed in logical, sequential and convincing fashion. The point was pivotal. Destruction of the January revelation by Graflund to Busby was crucial if the Treasury wished to destroy defendants' version of the disclosure and to validate its "suspicion" that one was not made until much later than Busby, Cain and Sauber had testified. Judge Nordbye, on remand, upheld the original testimony. He found, although the Court of Appeals overlooked the finding,

> **"* * * my appraisal of the evidence leads me to the conclusion that it is very probable that Graflund did mention to Busby something about the black-**

7. See our "Answer to Motion to Remand" in the original proceedings in this Court, Note 3 and pages 19-23.

> **market payments of Lubben to Shotwell when they were on the train together in January 1948.''** (P. 43, *infra.*)[8]

The Graflund debacle on the stand, the brain-washing he had been subjected to, was so evident, that we submit as Appendix E hereto an excerpt from his cross-examination in which he attempted to describe his conversion.

The second pivotal charge is that Busby did not go to Sauber until *after* June 21, 1948. Judge Nordbye found:

> **''* * * my view from all the evidence is that it is fair to find that Busby did visit Sauber about Shotwell's taxes some time before'' Revenue Agent Krane's visit of June 21, 1948.** (P. 44, *infra.*)

Finally, in the Court of Appeals **''government counsel expressly stated that the disclosure was timely.''** (P. 56, Note 3, *infra.*)

Also outstanding was the charge to this Court that Huebner had wanted to testify on the original proceedings but had been kept off the stand because he threatened to tell the truth. This charged a conspiracy for subornation of perjury. It was a charge that should not have been made unless the prosecutors were prepared to back it to the hilt. Certainly this Court must have assumed the prosecutors made it in good faith and were prepared to back it. ***Yet when the new hearing was held the prosecutors did not offer a syllable of proof in support of that deadly charge but utterly abandoned it.***

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8. This important finding is inexplicably omitted from the Court of Appeals' recital of the facts. The Court of Appeals quoted the District Court's discussion of Graflund's testimony down to the point where the District Court announced his conclusion quoted above, *but omitted the all important conclusion.* It is clear that Judge Schnackenberg seriously misapprehended the record for his opinion conveys an impression quite contrary to Judge Nordbye's actual finding.

The Jury Selection Procedures.

The grand jury which reinvestigated this case returned another indictment against petitioners in February 1957.[9] Defendants in that case filed motions challenging the composition of that indicting jury. A hearing was held therein before Judge Barnes in June 1957 which showed that the methods used to obtain the 1956 jury had been in effect when the 1952 grand and 1953 petit juries were drawn here. Petitioners moved to withdraw their pleas of not guilty in this case for the purpose of filing an amendment to their motion to dismiss the indictment herein because of the illegality of the juries here. That motion originally was denied on the ground that this case was then pending here (App. 16-17).

After this Court's decision defendants renewed the matter (A. 1111-1114). On a hearing with respect thereto it was stipulated that Judge Nordbye should consider the testimony taken in the other case (App. 313), and an affidavit of the Clerk of the Court (App. 313-4). The evidence showed without dispute:

1. In selecting prospective jurors the Clerk (a) selected names from membership rosters of several private organizations, including the identical League of Women Voters' list, which this Court specifically held in *Glasser* v. *U. S.*, 315 U. S. 60, should *not* be used, (b) accepted "volunteers," (c) accepted nominations by former grand and petit jurors (S. 127-215). About 60% of those selected by the Clerk were nominees of former jurors and 20% were volunteers.

2. Former Jury Commissioner Crooks entirely abandoned his non-delegable duty of selection to one Richard Jongsma, an employee of a corporation of which Crooks was president. The Commissioner was wholly unable to say how the persons supposedly, but not actually, selected

9. That case has never been brought to trial.

by him were selected (S. 227, 228, 235, 236, 242). As Mr. Crooks put it, "*He [Richard] does all the work and I take all the honor if there is any*" (S. 229). Crooks could not say that he personally read a single one of the questionnaires sent to the prospective jurors (S. 233). Jongsma read the questionnaires returned by prospective jurors and Jongsma determined those to be selected (App. 338-39). The trial court held (App. 438) that all that Mr. Crooks delegated were routine ministerial duties. *There is no evidence to support that finding.* In the Court of Appeals petitioners challenged the Government to cite any substantial evidence that would support it. The challenge was not accepted and the Court of Appeals opinion ignored the point. The Solicitor General's Brief in Opposition here will point to no substantial evidence warranting that finding.

REASONS FOR GRANTING THE WRIT.

1.

The Court of Appeals has hold that incriminating documents and information, induced from defendants by promises of immunity from criminal prosecution, may be used against them as "admissions against interest", and that this is true even though defendants, believing they were achieving immunity, expanded or exaggerated their "admissions" to fit what have been found judicially to have been "exaggerated" claims concerning them. So startling a holding, *unsupported by any prior authority, state or federal, reversing the Court of Appeals' initial view, and made in a case which this Court sent back for further consideration of whether the evidence should be suppressed,* takes on added importance and will have a profound effect upon federal criminal law in view of the observation in Justice Black's opinion herein that the point was heretofore unsettled.

Reduced to lowest terms, the District Court and the Court of Appeals on remand held that because Shotwell's figures as to *outgo* were in part fictitious they were fraudulent, and therefore the figures as to *income*, although also in part fictitious, could be used against defendants *as true*. Or stated another way, if *part* of a confession given under a promise of immunity is false *in favor of a defendant*, the confession may be introduced against him.

This is a wholly novel and pernicious doctrine. It ignores the common law theory that confessional material obtained by promise of immunity is inadmissible for the very reason that the confessor, to obtain immunity, is apt, as here, to confess things he did not do. (See *Wigmore, Evidence*, 3rd ed. Secs. 821-867). It is squarely contrary to this Court's holding in *Rogers* v. *Richmond*, 365 U. S. 534, 543, that a legal standard as to admissibility which takes "into account the circumstance of probable truth or falsity" of confessional material is impermissible under the Due Process Clause.

The impact of the present decision is heightened because it is a reversal of the first Court of Appeals decision which said (225 F. 2d at 406):

> "The evidence thereby obtained by the Government [through promises of immunity] stands on the same footing as an oral or written confession induced by such a promise. The use of such evidence in the trial was a violation of each defendant's privilege against being compelled in a criminal case to be a witness against himself as guaranteed by the Fifth Amendment . . ."

That holding squared with what had been understood to be constitutional doctrine and was in accord with the holdings as to voluntary income tax disclosures in *White* v. *U. S.*, 5 Cir., 194 F. 2d 215 (c. d. 343 U. S. 930); *Briggs* v. *U. S.*, 6 Cir., 246 F. 2d 40; *Monroe* v. *U. S.*, 5 Cir., 215

F. 2d 81; *Lapides* v. *U. S.*, 2 Cir., 215 F. 2d 253; *In re Liebster*, 91 F. Supp. 814. Cf. *State* v. *DeCola*, 33 N. J. 335, 352-3; 164 A. 2d 729.

The relevant considerations were stated, but not decided, by Mr. Justice Black when this case was first here (355 U. S. at 247):

> "I think the Fifth Amendment questions raised here are important, unsettled and not susceptible to offhand resolution, particularly with respect to incriminating evidence which the defendants actually turned over to the Government in hope of securing immunity from prosecution. In *Bram* v. *U. S.*, 168 U. S. 532, 542-543, the Court referred with approval to the rule that 'a confession, in order to be admissible, must be free and voluntary: that is, must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence . . .' In accord with this statement it appears to have been generally assumed in this Court that the Fifth Amendment bars the use against a defendant in a criminal prosecution of confessions or admissions secured from him by promises of immunity. (Citing cases.) And so far as I can tell this Court has never considered whether lack of good faith deprives a suspect of the Fifth Amendment's protection when he makes disclosures under a promise of immunity, or under just what circumstances and to what extent this might be true."[9]

Neither the opinion of the District Court nor that of the Court of Appeals upon remand discuss the constitutional questions. However, the present decision does not stand alone. The first decision, the decision of this Court and the second decision of the Court of Appeals will be read together to ascertain what the "Shotwell doctrine" as to evidence obtained by promises of immunity is—and that

9. It should be noted that although the foregoing is found in a dissenting opinion, it was not in opposition to anything in the majority opinion.

doctrine, unless certiorari be granted, is that the constitutional inhibition found in the first opinion does not exist.

The constitutional inhibition was evaded solely on the basis that the so-called "washout payments" shown on defendants' documents were, in part, fictitious, from which it was concluded that petitioners were not entitled to suppression of partially false exhibits.

The opinions are understandable only as an endorsement of a legal standard for admission or exclusion "which took into account the circumstance of probable truth or falsity," a standard which this Court condemned in *Rogers* v. *Richmond*. In *Rogers* the Connecticut courts had implied that if confessional material was secured under circumstances tending to indicate the probability that it was false, it would be *in*admissible. Contrariwise, in *Shotwell* the lower courts have held that if the material was probably false it is *ad*missible, even though this Court in *Rogers* said the Constitution poses "a question to be answered with complete disregard of whether or not petitioner in fact spoke the truth" (365 U. S. at 544).

If the decisions below mean, as they certainly will be construed, that if petitioners acted with impure motives in responding to the promise of immunity, whatever they produced may be used against them, then they create, as Justice Black's observations herein point out, a Constitutional test, or escape from the Constitutional prohibition, not heretofore found in the books. The question has been decided in England, where it was squarely held that a taxpayer's lack of good faith in presenting false documents under the English voluntary disclosure doctrine with the specific intent of reducing the tax liability did not prevent suppression. *Rex* v. *Barker*, 2 K. B. 381 [1941].

The courts below have overlooked that petitioners' voluntary disclosure raised two distinct questions—*First*, was the promised immunity enforceable? *Second*, could evi-

dence surrendered in reliance on the promise be introduced against defendants even if the disclosure was defective and the Government was free to prosecute by the use of other evidence? Petitioners raised these points by separate motions. The first was one to dismiss the indictment (R. 10, 612), the second to suppress (R. 120). The latter was based specifically on the Fourth and Fifth Amendments.

Although we assert that petitioners fully complied with the Treasury's voluntary disclosure invitations and should have been granted the promised immunity, it does not follow that because it is held that petitioners, *after making the disclosure*, did not sufficiently comply with the policy by furnishing all information they could have, or failed to comply by giving assertedly false information, that the Government may use evidence which it obtained by the promise of immunity. The opinions below overlook the fact that the Treasury, by attaching conditions to its "voluntary disclosure policy", could not attach conditions to, or limit, the unconditional prohibition of the Fifth Amendment against the reception in evidence of material obtained by promises of immunity, nor the prohibition of the Fourth against procuring papers and documents by stealth and artifice. (*Fraternal Order* v. *U. S.*, 3 Cir., 5 F. 2d 93, 94; *Gouled* v. *U. S.*, 255 U. S. 298, 304.)

If *Bram* v. *U. S.*, 168 U. S. 532, no longer states the law, and if *Rogers* v. *Richmond* has qualifications, such fact should rest only upon a decision by this Court. The important constitutional question which the majority felt was not ripe for decision when the case was first here has now been placed in such focus that it should be settled, for the trilogy of the first Court of Appeals opinion, then that of this Court, and finally the second Court of Appeals opinion makes devitalizing inroads into basic guarantys of the Bill of Rights.

2.

This Court granted the unusual motion to remand because the Government's allegedly newly discovered evidence, if true, showed the original evidence as to a disclosure was shockingly false and a fraud upon the courts. It remanded to see where the truth lay, saying, "The integrity of the judicial process demands no less."

The Court perceived the stern dilemma (355 U. S. at 242) that either the original testimony in the District Court was untrue or the affidavits tendered to this Court themselves were the product of fraud.

The courts below, perhaps because not familiar with the processes by which this Court had been induced to hold the case while the witnesses were pursued, or perhaps because unappreciative of how lacking in candor the presentation to this Court had been, did not face up to the unpleasant dilemma. Judge Nordbye nevertheless found there were "glaring inconsistencies and contradictions * * * in the testimony of Huebner, Graflund and Lima in the light of their prior statements and their testimony before the Grand Jury" (P. 52, *infra*). However, he did not "believe that any Government official has attempted to have any witness herein testify falsely" (App. 1769). This, if correct,[10] does not meet the problem. If there is any principle fundamental to our system of criminal law, it is that a public prosecutor must exhibit utmost candor to the court, and to the defendants and is not permitted to conceal or suppress relevant material evidence helpful to the defendants. His duty is not to win cases but to see that justice is done. *Berger* v. *U. S.*, 295 U. S. 78.

Canon 5 of the Canons of Professional Ethics condenses in unmistakable language the holdings of many cases:

10. Judge Nordbye's conclusion is difficult to accept because the final lurid and untrue charges made to this Court were too dramatic and the various parts of the story fit together too well, and too completely, to be the result of unrelated mistakes of memory by the witnesses.

> "The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that justice is done. The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is highly reprehensible." (62 Am. Bar Rpts. 1106.)

It applies to all who worked on the case. Here, most important relevant evidence was suppressed. For example, solemn, sworn testimony that was capable of establishing, and that ultimately did establish, that Busby was innocent of perjury and told the truth when he testified that Graflund revealed the facts to him in January 1948, was ruthlessly suppressed, and the claim was advanced that Busby was guilty of perjury.

We doubt that the Solicitor General, who presented the applications to this Court, was aware of what had been suppressed, but regardless of who ma have been at fault, the overriding fact is that this Court was imposed on. We submit it is the duty of the Department to explain, if it can, why this Court was not frankly told the full and true facts.

What was done here, although more refined and sophisticated than the conduct of the police officers in *McNabb* v. *U. S.*, 318 U. S. 332, who questioned suspects until they got all of the "discrepancies" in their stories satisfactorily worked out, was not essentially different in kind and was worse in degree because it involved lack of candor to this high court.

The Court of Appeals opinion says that the District Court on remand considered relevant testimony of the defendants untrue and in effect absolved the affidavits of Huebner and Graflund of the charge of fraud. As to this, three observations may be made: (1) The testimony of *defendants* which the District Court considered untrue *was their testimony as to the merits of the tax case.* The *District Court* made no finding that the testimony in which this

Court was interested, *i. e.*, that of Sauber, Busby and defendant Cain with respect to the time and the manner of the making of the disclosure, was untrue. As to the merits there can be no doubt defendants were entitled to a jury trial. (2) We do not think it can fairly be said that "in effect" the District Court absolved the affidavits of Huebner and Graflund of the charge of fraud, for in finding that Graflund did in fact reveal the black market facts to Busby in January 1948; the District Court found that the core of the Graflund affidavit to this Court was *false*. Likewise, large portions of Huebner's affidavit, and his testimony on remand, were rejected by the District Court, and Huebner's failure to support his crucial charge to this Court that he had tried to tell the truth on the original hearing but had been kept off the stand, was ignored. (3) In any event, so serious a matter should not be disposed of by an opinion which must be construed to find what "in effect" it holds and that is particularly true where this Court has gone to the pains of cataloging the charges to be answered.

Only after endless interrogations, "refresher courses", lie detector tests, and the obvious possibilities of new indictments from a new grand jury, the witnesses changed their stories to those ultimately laid before this Court.

The same integrity of the judicial process which required the remand now requires that the case be further reviewed to protect the processes of this Court.

Had this Court frankly been told, as the fact was in October 1956, that Graflund had been interviewed repeatedly and fully supported Busby's testimony as to the genesis of the disclosure; that Lima had been interviewed repeatedly and disclaimed any knowledge of an alleged $20,000 settlement or of making and destroying a Revenue Agent's report; that the only witness the prosecutors had was Huebner who confessed he had been an accomplice of Lubben, had received some $45,000 of money personally

and was trying to make the other two defendants share the blame, we think it is manifest that the motion to remand would have been denied out of hand. In any event, the Court was entitled to candor and did not get it.

In *Communist Party* v. *Subversive Activities Control Board*, 351 U. S. 115, 124, this Court said:

> "The untainted administration of justice is certainly one of the most cherished aspects of our institutions. Its observance is one of our proudest boasts."

That case, as well as *Mesarosh* v. *U. S.*, 352 U. S. 1, was relied upon by this Court in its remanding opinion here. The turn of events has shown that the administration of justice was "tainted" in the very proceeding purportedly brought to "cleanse the record."

We realize the seriousness of our presentation. It arises from the record and will be documented in much greater detail if the writ be allowed. The issue is so basic to the fair administration of criminal justice that the present petition should not be opposed by the Government, for it should be as interested as citizens in seeing that criminal justice in the highest court of the land is not tainted by false affidavits, and by the withholding of relevant evidence, so that prosecutors may have a further go at witnesses. If such things be condoned here it is a certainty that the standards of inferior courts will be lowered.

3.

The trial court found that Lubben's testimony on which the jury convictions depended, had been seriously false. There was no more important issue before the jury than that as to the gross amount of Lubben's payments, because unless defendants could establish that they had expended a like amount for raw materials, they were bound to be convicted.

On the jury trial the Government contended that Lubben's testimony (and books) proved a total of $454,000 (R. 1837-50). Because, *as now found*, that figure was seriously "exaggerated" defendants could not possibly show they spent that much for raw materials. On the remanded hearing Government witness Huebner flatly said that Lubben had "lied on the stand" when before the jury (App. 809); that Lubben lied when he testified he paid Graflund some $49,000 (App. 809); that one item (chocolate covered nuts) on which Lubben claimed he had paid $40,000 in "overages" had borne no "overages" at all. The new evidence, taking everything Huebner testified to at face value, is that Lubben paid only $234,000. That was the figure asserted by the prosecutors to Judge Nordbye. That is $220,000 less than what Lubben told the trial jury.

It was established, without contradiction on the new hearing, that Lubben's purported records which went to the jury had been "doctored" (App. 969) by one Tobias, who then became a Treasury employee.

Judge Nordbye found it was "entirely probable that Lubben exaggerated his testimony when before the jury" (App. 1758); that the probable amount which Lubben had paid, including $28,000 in the year 1944 which was not involved in the jury trial, was "between three and four hundred thousand dollars" (App. 1758). This means, even on the District Court's figures, that Lubben lied to the jury to the extent of at least $132,000—we think much more (See p. 12, *infra*). It is manifest that the jury verdicts are "tainted" by "tainted" evidence.

In 1953 the District Court described Lubben as "honest" and "faithful" and found that "*twelve jurors believed he told the truth*" (R. 3073). In 1959 he no longer could find that Lubben had been honest but perhaps "mistaken"; he found Lubben had "exaggerated".[11] We suggest that verbiage is a mere euphemism for perjury; *in any event*

it is a finding that the jury was grossly misled by seriously false and vital testimony. In this respect this case is the precise reverse of *U. S.* v. *Johnson*, 327 U. S. 106, referred to by the Court of Appeals, in which the trial court found that the Government's star witness had told the truth to the jury. It is a monstrous perversion of due process to say that the Government may open a case up, prove that its star witness deceived a jury and yet insist that the question of credibility was for the jury which never had the benefit of the evidence which proved how it had been deceived.

We suggest that the Court of Appeals' holding that unless there be a formal finding of technical perjury, a federal judge may enter sentences on jury verdicts which he has found to be based on outrageously false testimony which the jury nevertheless accepted as true, is destructive of the standards of decency in criminal law enforcement that this Court has always insisted on. The holding is especially incongruous coming in a case in which this Court was deeply concerned with the integrity of federal criminal processes.

The Court of Appeals' holding that there must be a specific finding of technical perjury is legally immaterial under the doctrine of this Court in *Mesarosh* v. *U. S.*, 352 U. S. 1. *Mesarosh* stands for the proposition that a conviction resting upon the testimony of a proven falsifier cannot stand. In that case, when it was suggested that the Government's star witness had given false testimony before other tribunals, which the Solicitor General was not prepared to say constituted legal perjury because possibly

11. Lubben has been well documented as a congenital perjurer and swindler. The United States Attorney for the Southern District of New York describes him as "a perjurer and a blackmarketeer and practically anything else you want to talk about" (R. 2589 of *Giglio* v. *U. S.*, 355 U. S. 339). *In re Carlsen*, 17 N. J. 338, 111 A. 2d 393, shows him in a distillery swindle in Puerto Rico in 1951. *State* v. *Weleck*, 34 N. J. Super. 267, 112 A. 2d 23, 25, again proves his penchant for perjury.

caused by a psychiatric condition of the witness, this Court granted a new trial, saying (352 U. S. at p. 9):

> "The question of whether his [Mazzei] untruthfulness in these other proceedings constituted perjury, or was caused by a psychiatric condition, can make no material difference here. Whichever explanation might be found to be correct in this regard, Mazzei's credibility has been wholly discredited by the disclosures of the Solicitor General. No other conclusion is possible. The dignity of the United States Government will not permit the conviction of any person on tainted testimony. This conviction is tainted and there can be no other just result than to accord petitioners a new trial."

At p. 14 this Court said:

> "Mazzei, by his testimony, has poisoned the water in this reservoir, and the reservoir cannot be cleansed without first draining it of all impurity. This is a federal criminal case, and this Court has supervisory jurisdiction over the proceedings of the federal courts. If it has any duty to perform in this regard it is to see that the waters of justice are not polluted. Pollution having taken place here, the condition should be remedied at the earliest opportunity."

In *Mesarosh* the Solicitor General, on the basis of false testimony *in other cases*, thought there was a possibility of false testimony in the criminal proceeding. Here we have a judicial finding of *false testimony in the criminal case itself.*"

To paraphrase this Court in the *Mesarosh* case, these petitioners were convicted by the tainted testimony of Lubbon; the pollution caused by the tainted testimony can be cleansed only by granting a new trial.

In *Communist Party v. Subversive Activities Control Board*, 351 U. S. 115, this Court said at p. 124:

> "When an uncontested challenge is made that a find-

ing of subversive design was in part the product of three perjurious witnesses it does not remove the taint for a reviewing court to find there was ample innocent testimony to support the Board's findings."

In both, *Mesarosh* and *Communist Party*, this Court cited *McNabb* v. *U. S.*, 318 U. S. 332, where the Court said (p. 340), "Judicial supervision of the administration of criminal justice in the Federal courts implies the duty of establishing and maintaining civilized standards of procedure and evidence."

This Court has held it to be a denial of due process for a state to obtain a conviction by the knowing use of perjury. *Mooney* v. *Holohan*, 294 U. S. 103. In *Napue* v. *Illinois*, 360 U. S. 264, 269, it said, "The same result obtains, when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." False evidence here appeared before sentencing. The record should have been cleansed of that impurity before a jury which heard truth, not lies.

The District Court applied a double standard: He resentenced petitioners, although he did not find that they had committed any perjury in the first disclosure hearing, but ignored the fact that the evidence to sustain the conviction rests on the testimony of a witness he found to be a falsifier.

We suggest that in responding to this petition it will be the duty of the Department of Justice to say whether it approves sending citizens to the penitentiary on known false evidence.

4.

There can be little doubt that both the grand and petit juries were illegal:

The duties of a Jury Commissioner "may not be delegated" (*Glasser* v. *U. S.*, 315 U. S. 60, 85; *U. S.* v. *Murphy*,

224 Fed. 554, D. C. N. Y.; *In re Petition for Special Grand Jury*, 50 F. 2d 973, D. C. Pa.). The seriousness of that rule is demonstrated by *Dunn* v. *U. S.*, 5 Cir., 238 Fed. 508, in which, at a time when the statute authorized only the Clerk of the Court and the Jury Commissioner to select jurors, a Deputy Clerk had performed the Clerk's functions. Solely because of the delegation a conviction was set aside. It was necessary to have the statute amended to its present form, which permits a Deputy Clerk to exercise the duty of selection in large districts (See House Rpt. No. 1322, 64th Cong., 2nd Sess.).

Judge Nordbye erroneously held that the Commissioner delegated merely ministerial duties to Jongsma. In the Court of Appeals we challenged the Government to show any evidence that would support that finding. Unable to do so, it ignored the challenge and the Court of Appeals ignored the point. Court should not feel at liberty to ignore incontestable proof that a Congressional mandate that the Jury Commissioner alone select prospective jurors has been violated. The Solicitor General should concur with us on this point, but if he files a Brief in Opposition, he will be unable to cite any substantial evidence showing that Commissioner Crooks selected a single one of the jurors theoretically selected by him. The juries, as a matter of law, therefore, were illegal. We suggest it is obvious that this Court should use its supervisory powers to see that mandatory provisions as to who may select jurors be not set at naught.

The Clerk of the Court and the Jury Commissioner were under an affirmative duty to select jurors constituting a cross section of the population. Yet 39% of the grand jurors were "volunteers" and another 30% had been recommended by former grand jurors. Such a group could not remotely constitute a cross section of the population. The jury was substantially a volunteered and self-

perpetuated group. 39% of the population does not wish to serve on juries. Courts have trouble getting jurors. The minute one finds a jury in which 39% of the members sought the position, one knows it is a group which is far from a true cross section.

At the time the jurors were selected the federal statute required that the jurors be competent as jurors under the law of Illinois. The Illinois law completely precluded volunteers by requiring that jurors be selected from voting lists and by making the act of volunteering a disqualification. All of the jurors who were volunteers thus were incompetent.

Finally, the leading case of *Glasser* v. *U. S.*, 315 U. S. 60, which arose from the Northern District of Illinois, flatly forbade the use of any private lists and specifically the membership list of the Illinois League of Women Voters, as a source for jury names. Nevertheless the Clerk of the Court continued to use that very list. One regular and one alternate member of the petit jury came from it. Another member came from the Illinois Opera Guild membership list. Decisions of this Court endeavoring to guide jury selection procedures will do little good if flagrant nonobservance of them is tolerated.

The trial judge took the position that because defendants could not show that some specific race or class was singled out for exclusion that the jury was satisfactory. That view misses entirely the bigger question—the process of selection used was in no way calculated to produce a cross section of the population. It could not, and did not, do so. Unless one's name was on one of the lists used by the Clerk or one was nominated by a former juror one had no actual chance of being selected for the Clerk's half of the names which went into the wheel.

The Court of Appeals' opinion handles the matter in per-

emptory fashion by ignoring the point as to the illegal activities of Richard Jongsma, by ignoring the binding Illinois law that made volunteers incompetent, and finally by saying that petitioners failed to show they were "actually prejudiced by the method by which jurors were selected" (p. 63, *infra*). In so doing the Court of Appeals ruled squarely contrary to this Court's holding in *Ballard* v. *U. S.*, 329 U. S. 187, 195:

> "But *reversible error does not depend on a showing of prejudice in an individual case.* • • • The injury is not limited to the defendant—there is injury to the jury system, to the law as an institution, to the community at large, and to the democratic ideal reflected in the processes of our courts." (Italics ours.)

The Court overlooked also that this Court ruled in *Glasser* v. *U. S.*, 315 U. S. 60, 86:

> "Tendencies, no matter how *slight*, toward the selection of jurors *by any method other than a process which will insure* a trial by a *representative* group are undermining processes weakening the institution of jury trial, and *should be sturdily resisted.*" (Italics ours.)

5.

The errors of the District Court in admitting evidence obtained under promises of immunity were continued into the instructions which the Court gave the original jury. Much evidence was received with the limitation that it did not apply to the defendant Sullivan, yet the jury was instructed to consider that evidence with respect to him. Finally there remains the perplexing question noted by footnote 3 of the majority opinion and by Justice Black's dissent when the case was first here: whether defendants' alleged admissions had been properly obtained, was correctly taken from the jury when the jury in effect was

told that defendants had not acted in good faith because their disclosure had not given them immunity. The jury was precluded from any investigation of the issue. (Cf. Meltzer *Involuntary Confessions; the Allocation of Responsibility Between Judge and Jury*, 21 U. Chi. L. Rev. 317.)

CONCLUSION.

This case now raises far more serious questions than originally were presented, for the new hearing showed that petitioners were originally convicted by false evidence. The question of basing convictions upon incriminating evidence obtained by promises of immunity not only remains but has been placed in such aggravated focus that it should be settled by this Court.

All of the reasons of protecting fairness, decency and integrity in federal criminal processes that originally moved this Court to act now should impel the Court to review the case in the light of the disturbing revelations of the remanded hearing, and the Court of Appeals' reversal of its original position on the constitutional issues.

Respectfully submitted,

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June 8, 1961.

APPENDIX A.

Opinion of District Judge Nordbye on Remanded Proceedings.

ORDER.

This case comes before the Court on a rehearing of the suppression issue ordered by the Supreme Court in its opinion in the United States *vs.* Shotwell Mfg. Co., et al., under date of December 16, 1957. The ensuing delay in disposing of this issue as ordered by the Supreme Court is due primarily to the illness of one of the defendants which required continuances of the hearing.

Mr. Vincent P. Russo, Mr. Charles A. McNeils and Mr. Donald A. Hansen, Special Attorneys, Department of Justice, Washington, D. C., appeared in behalf of the United States of America;

Mr. George B. Christensen and Mr. Neal J. McAuliffe, of Messrs. Winston, Strawn, Smith & Patterson, Chicago, Illinois, appeared in behalf of defendants Byron A. Cain and The Shotwell Manufacturing Company;

Mr. William T. Kirby, Chicago, Illinois, appeared in behalf of defendant Harold E. Sullivan.

The rehearing of the suppression issue was ordered by the Supreme Court by reason of the showing of the Government that the decision of the Court of Appeals in United States *vs.* The Shotwell Mfg. Co., et al., 225 F. 2d 394, in reversing the trial court upon the ground that it had failed to suppress the use of certain evidence produced

by the defendants, was based upon a fraudulent record before the trial court which was attributable to the defendants' own fraud. The supplemental hearing on defendants' motion to suppress the evidence in question was submitted on the additional evidence produced at said hearing, the record at the first suppression hearing, and the entire existing record of the trial when these moving defendants were found guilty by the jury of the offenses charged in the indictment. When the Court uses the term "defendants" it refers to the named defendants other than the defendant Huebner.

The showing before the Supreme Court as to the position of the defendants on the original motion to suppress is stated in the following language, 355 U. S. 233, 237.

> "* * * The substance of that position was presented by Leon J. Busby, Shotwell's accountant, who testified at both the hearing on the motion to suppress and at the trial. He stated that the Shotwell Company in each of the years 1945 and 1946 had received substantial cash payments for black-market candy sales above O. P. A. ceiling prices; that these receipts were not recorded on Shotwell's books and were not reported in its income tax returns; that he first learned of these facts in the course of conversations with H. Stanley Graflund, Shotwell's comptroller, during a trip they took to New York early in January, 1948; that immediately upon his return to Chicago he discussed the matter with respondents Cain and Sullivan; that he recommended disclosing the omissions to the taxing authorities; and that, at the direction of respondents, he revealed the entire affair to Ernest J. Sauber, Deputy Collector in Chicago, in a series of conferences beginning in the latter part of January 1948, at one or more of which conferences he was accompanied by Cain. He also testified that thereafter, acting under Sauber's instructions and assurances that only a civil liability was involved, he and his staff, with the assistance of Cain, Huebner and Graflund,

conducted an exhaustive investigation over a period of several months to reconstruct the Shotwell figures on the black-market transactions. He said that these figures were furnished in August 1948 to a revenue agent for scrutiny.

"Sauber and Cain gave similar testimony, except that Sauber fixed Busby's first visit to him at about the middle of March 1948. Cain's explanation of Shotwell's failure to report the black-market receipts in its income tax returns was that he believed such receipts were not taxable since they were used by Shotwell to purchase black-market supplies and therefore gave rise to no profit."

The Government's position was stated by the Supreme Court in this manner, p. 239,

"In support of its motion the Government has filed with the Court the affidavits of Huebner and Graflund, which they executed after the Government filed its petition for certiorari. These affidavits paint a sharply different picture of the entire affair, indeed, they flatly contradict the tale unfolded on behalf of the respondents in the District Court. More specifically: (1) Graflund swears that the first time he discussed the black-market transactions with Busby was at Busby's home in late June 1948, at which time Busby gave no indication that he had previously known of these transactions; (2) Graflund and Huebner swear that at no time prior to a meeting held in July 1948 were they ever advised or led to believe by respondents that Shotwell's black-market receipts had been disclosed to the Treasury; (3) Huebner swears that it was at this July 1948 meeting that Cain first told him that a voluntary disclosure would be made, and that Cain also gave him to understand that it had been 'agreed' that the date of the disclosure 'would be set at June 15, 1948'; (4) Graflund and Huebner swear that prior to the middle of July 1948 no work was done by anyone to assemble records or data for the purpose of making a disclosure to the taxing authorities,

and that the alleged offsetting payments for black-market supplies were in fact concocted 'out of thin air' at the July meeting; and (5) Huebner swears that in July and August 1948 he gave Cain $10,000 which Cain said he needed 'to fix the tax difficulty we were in'."

And in view of the newly discovered evidence as disclosed by the Government's showing, the Supreme Court made the following observation, p. 240,

"It is obvious that the Government's new evidence casts the darkest shadow upon the truthfulness of the disclosure testimony given by or on behalf of the respondents in the District Court; If true, it indicates that what the respondents have sought to represent in the District Court, the Court of Appeals, and in this Court as a voluntary disclosure, made in a timely manner and in good faith, was instead but a further step in a conspiracy to 'fix' Shotwell's tax difficulties, possibly involving the corruption of government officials, and certainly entailing an attempt to perpetrate a fraud upon the courts. Were we to undertake to review the Court of Appeals upon a record as suspect as this, we might very well be lending ourselves to the consummation of a fraud which may already have made the Court of Appeals its unwitting victim. In these circumstances it is imperative that the case be remanded to the District Court for a full exploration of where the truth lies before the case is allowed to proceed further. The integrity of the judicial process demands no less."

At the supplemental hearing, this Court heard the additional evidence proffered by the Government and that offered by the defendants. It is on the entire existing record, as heretofore stated, that this Court is now to determine the timeliness of the alleged voluntary disclosure and whether or not a bona fide disclosure was in fact ever made. Necessarily, the burden of proof rests on the de-

fendants to establish their motion. The Court is not unmindful, however, that in order to sustain a finding of fraud, the evidence must be clear and convincing. Concededly, the Court is confronted with a considerable task in attempting to ferret out the true facts from the welter of evidence in the three records and to make definitive findings on every disputed issue of fact.

Some fourteen years have elapsed since the black-market operations of Shotwell took place. No record was kept by Shotwell or any of its officials as to the premium moneys paid by Lubben and his companies during the years in question. It is conceded that thousands of dollars were paid to Shotwell by Lubben and his representatives as black-market payments on candy sold to Lubben and his companies during 1945 and 1946 without any attempt on the part of Shotwell to make any written record thereof. Consequently, it is perfectly understandable that when a witness like Huebner attempts to recount the some sixteen instances when he received substantial sums of money on behalf of Shotwell as over-ceiling payments on candy sold by that company, the amounts and circumstances as to the disposition of the money may not be too clear in his memory. However, the testimony he has given at the supplemental hearing is reasonably consistent and compatible with the testimony given by the government witnesses at the trial regarding these payments. Huebner did not take the stand at the first supplemental hearing nor during the trial; hence, his testimony as to the amounts of money received and the siphoning of these payments to various officials of the company in many instances discloses for the first time which individuals were the recipients of Lubben's payments. However, Huebner may be mistaken as to the exact amounts of money received and when the payments were made. Moreover, that Lubben may have exaggerated the amounts of the payments that

he and his confederates made to Shotwell is entirely probable. But the evidence is overwhelmingly clear that not only were substantial sums of black-market money paid to Shotwell as premium payments by Lubben during 1944, 1945 and 1946 totaling between three and four hundred thousand dollars, but also that the greater part of this so-called black-market money was appropriated by Cain, Huebner and Sullivan for their own personal use. The question of good faith does not turn on the exact amount of Lubben money Huebner, Sullivan or Cain may have received for their own personal use. That Cain personally received substantial amounts of the Lubben black-market payments and that Sullivan knew of these payments and received a certain share for his personal use, but in a lesser amount than Cain and Huebner, is fully established by the record. Neither Sullivan nor Busby took the witness stand at the supplemental suppression hearing.

As stated, there are two primary questions which the Court should determine on the record now before it; first that of the timeliness of any so-called voluntary disclosure made by Shotwell and these defendants, and second, whether or not a bona fide disclosure was made within the purview of the so-called voluntary disclosure doctrine.

It will be remembered that Busby, Shotwell's accountant, stated that he went to Sauber in January, 1948, and disclosed to him that Shotwell had failed to include as income the black-market payments received from Lubben when it made its tax returns for the years 1945 and 1946. Busby stated at the first suppression hearing that he was prompted to make the disclosure to Sauber at this time because he first learned of the Lubben-Shotwell over-ceiling transactions from Graflund when the two were together on a train coming from New York to Chicago. Graflund on several occasions prior to the supplemental suppression hearing

supported Busby's statement in this regard, but on the supplemental suppression hearing he testified that, in stating that he imparted this information to Busby in January, 1948, he was in error and that upon further consideration and reflection, he is now convinced that he did not tell Busby about the Lubben-Shotwell transactions until after Agent Krane had made a visit to the Shotwell plant on June 21, 1948. The explanation that Graflund has given as to why he has changed his mind in this regard is not too satisfactory, and my appraisal of the evidence leads me to the conclusion that it is very probable that Graflund did mention to Busby something about the black-market payments of Lubben to Shotwell when they were on the train together in January, 1948. When Agent Krane visited the Shotwell plant in June, 1948, Graflund telephoned that fact to Cain, who was in New York, and Cain became highly disturbed because Graflund had permitted Krane to inspect certain records at the Shotwell plant. Cain told Graflund that he had no business to turn over any of the records of Shotwell to an Internal Revenue agent, and criticized him severely for doing so. Krane's visit to Shotwell's plant was in connection with an investigation of the Lubben-Shotwell black-market transactions. In any event these circumstances prompted Graflund to get in touch with Busby at his home shortly after Krane's visit, and Graflund now testifies that it was on this occasion that he first disclosed to Busby the transactions with respect to the company's black-market dealings with Lubben. That there were two occasions when Graflund discussed this matter with Busby is entirely probable, and due to the lapse of time he now states in good faith that the first disclosure to Busby was at the time of his visit at Busby's home in June, 1948. The apparent falsity of Busby's statement that he first spoke to Sauber in January, 1948, about Shotwell's tax situation may well have caused Graflund to question the train episode as related by Busby.

Sauber testified that he was not interviewed by Busby regarding Shotwell's tax situation until March 15, 1948, or thereabouts. All the circumstances disclosed by the evidence convincingly indicate that Busby is wrong when he states that he and the Shotwell employees were working on figures for a voluntary disclosure from January, 1948, to June, 1948. The exact time that Busby made a visit to Sauber's office is difficult to pin point, and although the Government contends that it was not made until after the visit of Agent Krane to the Shotwell plant, my view from all the evidence is that it is fair to find that Busby did visit Sauber about Shotwell's taxes some time before Krane's visit. There is testimony of one Edmund B. Horgan, a former agent with the Internal Revenue department, who testified that at Sullivan's request on June 4, 1948, he called Sauber as to the delay in closing the Shotwell tax matter. Although it is difficult to understand why Sullivan became concerned, at that early date, over the so-called delay when no figures had as yet been presented to any revenue officials, the status of the alleged disclosure may have been unknown to Sullivan. It is reasonable to find that when Busby did visit Sauber, mention was made of Shotwell's black-market transactions and of its failure to include these receipts in its 1945 and 1946 tax returns. And it is entirely probable that Busby represented to Sauber, as told to him by Cain, that all of the black-market income was offset by premium payments which Shotwell had made for raw materials. Cain likewise may have visited Sauber with Busby prior to June 21, 1948, and the tax situation of Shotwell was discussed at these visits. It is fair to find from the evidence that Sauber informed Busby, as well as Cain, that it would not be necessary to file an amended tax return, but rather to disclose the entire black-market premium receipts and to make a computation of all the alleged offsetting premium

disbursements which Shotwell allegedly made for raw materials. And it is entirely probable that Sauber informed Cain and Busby that, if they made an honest, bona fide voluntary disclosure, there would be no criminal prosecution and that Shotwell would incur only a civil liability. However, no attempt was made by Busby or any of the officials of Shotwell to turn over to the Government any computations of the black-market receipts and alleged black-market outlays until after Krane's visit to the Shotwell plant on June 21, 1948. Cain's plans were to effect an early settlement of Shotwell's taxes before any government agents pried into the company's books and records. Now, Krane's visit was not prompted by any information imparted by Sauber to the Internal Revenue Department, and when Graflund permitted Krane to inspect some of the records during Cain's absence, then for the first time these defendants began to exert themselves in the preparation of their so-called voluntary disclosure for the Government's consideration. I do not mean to imply, however, that defendants had not attempted between January and July, 1948, to gain information as to Lubben's books and records and as to the data such records would disclose as to his contentions regarding the over-ceiling payments made to Shotwell. When Lubben began to have tax troubles, Shotwell's officials knew that their day of reckoning was not far distant.

It was not until some time in July, 1948, however, that any concerted effort was made by these defendants to make up a so-called voluntary disclosure. It is undoubtedly true that Cain, by reason of the lack of any records in Shotwell's possession, felt required to accept Lubben's figures of black-market transactions although he believed they were exaggerated. On the other hand, the alleged offsetting black-market payments made by Shotwell to wash out, so to speak, black-market receipts, were, as represented

to the Supreme Court by the affidavits of Huebner and Graflund, concocted "out of thin air." These figures were made up at a meeting in Busby's office in July, 1948, and at the Belden Stratford Hotel during that month, where Shotwell's representatives, including Cain, Huebner and Graflund, remained for some days in attempting to devise the amount of the black-market receipts to be offset by fictitious black-market disbursements in substantially the same amount.

Huebner testified at the supplemental hearing to the effect that no black-market receipts went into the so-called "corn box", which was the depositary for the moneys to be used for the purchase of raw corn, until some time after or during January, 1946. However, there is other testimony in the record which fairly indicates that the corn box may have been opened with some of Lubben's premium money during the Fall of 1945. It is not particularly important to determine on this hearing the exact period of the existence of the corn box or the exact amount of Lubben's money that was used to purchase raw corn. Suffice it to say that the evidence clearly establishes that only a relatively small percentage of the black-market payments made by Lubben to Shotwell were utilized for the purchase of raw corn, and whether the utilization of such premium money began in the Fall of 1945 or the early winter months of 1946 is not of any great moment on this motion. When these defendants presented the so-called voluntary disclosure by way of written computations of black-market income and black-market outgo, the amounts allegedly paid for raw materials were fictitious figures selected by Cain with full knowledge that they were without verity and merely inserted in the record in order to wash out, so to speak, the black-market receipts except for some $6,000. I find, therefore, that any so-called voluntary disclosure to Sauber by Busby and Cain prior to June 21, 1948, if it be

such within the purview of the voluntary disclosure doctrine, did not precipitate the investigation of the Lubben-Shotwell transactions by Krane and that it was not until after Krane's visit to Shotwell's plant that figures were presented to the Government allegedly showing the black-market receipts of Shotwell and Shotwell's alleged premium payments for raw materials. Obviously, therefore, whatever Busby and Cain may have told Sauber prior to June 21, 1948, regarding the failure of Shotwell to file an honest tax return for the years in question, Sauber contends that they failed to inform him that, instead of being utilized to pay for raw materials, a large amount of the premium overages "stuck to the fingers" of some of the officials of the company, which according to Huebner's testimony was the vernacular Cain employed in describing the Shotwell-Lubben transactions.

Prior to the first suppression hearing, it is apparent that Cain, Busby and Huebner had discussed the date which should be used as the time when the so-called voluntary disclosure was made to Sauber. Huebner apparently gathered from the conversation that June 15, 1948, was to be the date, in that that date would be at least a week prior to Krane's visit to Shotwell's plant. It seems evident that Huebner had not been taken into the confidence of Sauber, Cain and Busby regarding the date of disclosure as agreed upon, because after the testimony of Sauber at the first suppression hearing to the effect that he had been first visited by Cain and Busby on March 15, 1948, regarding the Shotwell tax situation, Huebner's surprise is evidenced by the remark that he made to Cain when they left the United States Court House after Sauber had testified, and when he said to Cain, "I thought the voluntary disclosure date was supposed to be June 15, 1948." Upon which Cain said to him, "Ssshhh! There is nobody that knows anything about this. Keep quiet." Cain denies that

he ever had this conversation with Huebner. My own appraisal of the testimony leads me to the belief that Huebner is honestly relating that episode. March 15, 1948, was just an arbitrary date which was agreed upon by Cain, Busby and Sauber in that the latter would testify that it was about that date when Busby first visited him. But obviously it was much later when Sauber was informed that Shotwell was the offending taxpayer. At the first suppression hearing, Cain testified that he was in California from March 11, 1948, to April 21 or 22, 1948. Busby testified at that same hearing that he was in California from March 16 to April 10, 1948, and that he was too busy with other tax matters to have seen Sauber on March 15, 1948.

Defendants urge that if any of the black-market money paid by Lubben went into the hands of the corporate officers by way of constructive dividends, it is immaterial as to the issue of good faith; that is, they urge that whether the black-market money went to officials of Shotwell or whether it went for the purchase of corn, or if some of the money was diverted for each of such purposes, the result taxwise would be the same in view of the public-announced policy of the Internal Revenue Department, which was adhered to until 1950, to the effect that, for tax purposes, over-ceiling payments for raw materials would not wash out the over-ceiling receipts of the taxpayer. Hence, defendants argue that taxwise, in view of the Internal Revenue Department's policy, Shotwell would be required to pay a tax on all of the black-market receipts as income whether they went into the black-market payments for raw materials or whether they went into the pockets of the corporate officers. In other words, the defendants contend that Shotwell would not, under the Commissioner's ruling, have been allowed a deduction from such gross receipts under either circumstance, and hence the identity of the ultimate recipients of Lubben's money was not necessary in

order to have a bona fide and good-faith voluntary disclosure. But that reasoning is not sound and is obviously specious. If all the black-market moneys received by Shotwell had been paid out by Shotwell for over-ceiling raw materials necessary to its candy manufacture, then such disclosure would have been an honest, forthright representation of the true facts. Under such circumstances Shotwell would have a right to challenge the Commissioner's ruling as to the non-deductibility of black-market payments for raw materials, and after payment of its tax, institute an action to recover the assessment imposed. However, if only a relatively small portion of the Lubben payments were expended by Shotwell for black-market raw materials and the balance diverted into the hands of the officials of the company by way of constructive dividends, then obviously the receipts by Shotwell from Lubben to the extent of such constructive dividends indisputably must be stamped as income to the company. In representing to the Government that all of the premium payments to Shotwell were expended for raw materials, these defendants made a dishonest, false and fraudulent disclosure, because such a disclosure did not conform to the true facts. The so-called voluntary disclosure was concocted for the express purpose of misleading the tax officials. It is true that the question of an honest disclosure does not, as the Court of Appeals held, necessarily turn upon the identity of the recipients of the black-market premium paid to Shotwell; that is, the defendants were not required to disclose the names of Richard Roe or John Doe as the alleged conduits through whom corn was purchased in order to obtain the necessary supply of corn syrup for Shotwell's candy manufacture. But if the unreported income was not disbursed for over-ceiling raw materials and hence offset, but was in fact received by Cain, Huebner and Sullivan, as the record amply establishes, then admittedly material facts

were not made known to the Government at the time of the disclosure, whether such disclosure be determined as taking place during some of the preliminary conversations between Cain, Busby and Sauber prior to June 21, 1948, the date of Krane's visit to the Shotwell plant, or when the actual figures of receipts and disbursements for 1945 and 1946 of black-market income and disbursements were later, and after June 21, 1948, presented by the defendants to the Government.

The Court of Appeals in its opinion, 225 F. 2d 395, 403, found that there was no inconsistency in making a disclosure that there was no tax due, stating in referring to the defendants,

> "While they coupled a disclosure of unreported income with a *legal* suggestion that that income was not taxable because it was offset by disbursements substantially equivalent thereto for over-the-ceiling purchases of raw material, contrary to the ten legal contentions of the Treasury Department, they did disclose the *facts*."

However, the record now persuasively establishes that the defendants never did disclose the true facts to the Treasury Department in that they failed to reveal that substantial amounts of the unreported income were diverted into the pockets of the officials of the company and falsely contended that substantially all of the black-market receipts were expended for over-ceiling purchases of raw materials. This is not only the Court's conclusion based upon the entire record, but it necessarily was the jury's conclusion on the record at the trial in that the jury was expressly instructed that, if the over-ceiling payments received by Shotwell were expended for raw materials in carrying on its candy manufacturing business, then its verdict must be one of not guilty.

There was evidence before the Court at the supplemental

suppression hearing that Cain had stated to Huebner in the Summer of 1948 that he had to have some $10,000 in order to "fix" Shotwell's tax case. Huebner testified that that sum of money was actually delivered by him to Cain for such alleged purpose. On this record, the Court cannot make a definitive finding as to whether or not any officials of the Government were actually bribed. However, I am convinced that this episode regarding the "fixing" of tax officials by Cain occurred as related by Huebner, and I also am convinced from this record that, in the Summer of 1948, Cain stated to Huebner that he had been able to settle Shotwell's tax difficulties for the sum of $20,000, whereupon Huebner was so relieved that he notified Graflund, who was on his vacation, of the good news. But Cain's plans in that regard went awry and no settlement was forthcoming. Of course, what caused the disruption of the proposed adjustment of Shotwell's tax on the basis Cain had indicated to Huebner is shrouded in some mystery. The record does disclose that Agent Lima, at his superior's direction, made a report in the Fall of 1948 designed to settle Shotwell's taxes for about $20,000. It seems improbable, however, that Agent Lima's report was to be the final adjudication of Shotwell's tax obligations, and I can only conclude on this record that some preliminary steps were taken by Lima to prepare a report which had for its purpose the settlement of Shotwell's tax deficiency in the amount indicated. Lima testified that he destroyed his report at the direction of a superior official after a meeting held in the Internal Revenue Department early in the Fall of 1948. His testimony ties in with Huebner's testimony that at about this time Busby told him that there had been a meeting in the fraud division of the Internal Revenue office about the Shotwell taxes; that papers were being destroyed and that "all hell had broken loose" in the department. The evidence in this regard strongly tends to illustrate the con-

nivance and lack of good faith in the so-called bona fide voluntary disclosure of Shotwell's tax deficiency. The machinations of defendant Cain in his attempt to defraud the Government permeate the entire record.

I am not unmindful that there are some glaring inconsistencies and contradictions which appear in the testimony of Huebner, Graflund and Lima in light of their prior statements and their testimony before the Grand Jury. Defendants urge that Huebner and Graflund, concerned with possible future criminal prosecution against them by the Government, and Lima, worried about his job, have wittingly or unwittingly followed the suggestions and pattern of events which zealous government officials may have attempted to inculcate. I have endeavored to make reasable allowances for the lapse of the years which dim memories, and to give due consideration to the claim of the defendants as to the interest of the revenue officers, and perhaps others, to encourage these witnesses to follow a chronology of events and circumstances which may support the Government's contentions as to what occurred during the years in question. However, I do not believe that any government official has attempted to have any witness herein testify falsely. That there was fear on the part of Huebner, Graflund and Lima as to the retaliation of the Government in view of their complicity in the fraud perpetrated is undoubtedly true. But to suggest that all of the diverted black-market money received by Shotwell from Lubben and his companies went to Huebner and that none of it was pocketed by Cain or Sullivan is simply incredible in light of the evidence. If these three witnesses, Huebner, Graflund and Lima, had not engaged in any questionable transactions in connection with Shotwell's tax problems, there would have been no occasion for them to fear government prosecution and to offer themselves as witnesses for the Government. There is no sound basis for

the suggestion that they are trying to frame Cain and Sullivan. Huebner and Graflund were not the men in charge of Shotwell's operations; they carried on their duties at the beck and call of their supervisors. Cain was the head of that institution and Sullivan came next in authority. In his testimony at the first suppression hearing, Cain stated that Huebner and Graflund were men of the highest integrity. The candid and self-incriminating admissions of Huebner that he received such substantial sums from the Lubben black-market payments and obtained therefrom some $45,000 for his own use, not only tends to corroborate Lubben's testimony, but also lends credence to the Government's position that he is trying to the best of his ability to tell an honest and straight-forward story as to the events that took place regardless of his own entanglement in this tax fraud. Errors or inconsistencies in Huebner's testimony do not, as defendants contend, discredit his entire testimony. The forthright attitude of government counsel to submit all prior statements and Grand Jury testimony of Huebner and Graflund to defendants' counsel indicates a commendable frankness in affording the Court all of the background which may bear upon their veracity.

Graflund never received one cent of Lubben's money for his own personal use. Whatever he did in connection with Shotwell's black-market transactions or in furtherance of any scheme to defraud the Government with respect to the alleged voluntary disclosure was dictated or suggested by his superiors. Regardless of the disagreements between his present testimony and his prior statements and Grand Jury evidence, I believe Graflund is attempting now to tell the truth as he remembers the events after the lapse of these many years.

On this record, in view of the convincing evidence, there must be a finding, and I do so find, that fraud permeated

the showing made by these defendants before me at the original suppression hearing, as well as at the trial and the supplemental hearing, and I find that no honest, bona fide voluntary disclosure to any government official ever was made by Shotwell or these defendants with respect to Shotwell's 1945 and 1946 taxes as contemplated by the voluntary disclosure policy in existence at the time. A dishonest and false disclosure cannot be held to be a timely voluntary disclosure.

The above may be considered as the Court's findings of fact, and as conclusions of law I find that defendants' motion to suppress must be, and the same hereby is, in all things denied. It is so ordered. Exceptions are reserved.

Dated this 15th day of April, 1959.

GUNNAR H. NORDBYE,
United States District Judge.

APPENDIX B.

Opinion of Court of Appeals for Seventh Circuit.

February 8, 1961.

Before DUFFY and SCHNACKENBERG, *Circuit Judges*, and GRUBB, *District Judge*.

SCHNACKENBERG, *Circuit Judge*. Harold E. Sullivan, Byron A. Cain and The Shotwell Manufacturing Company, a corporation, defendants, have appealed from judgments of the district court entered May 22, 1959, based on a jury verdict entered in 1953, adjudging each of them guilty of attempting to defeat and evade the payment of taxes owing by Shotwell, in violation of 26 U.S.C. § 145 (b), Int. Rev. Code of 1939.[1]

These judgments were entered by the district court following a hearing held pursuant to an order of the United States Supreme Court. *United States* v. *Shotwell Mfg. Co.*, 355 U. S. 233, 246. By the same order the Supreme Court vacated our judgment reversing prior judgments of the district court based on said verdict, *United States* v. *Shotwell Mfg. Co.*, 225 F. 2d 394, 406.

We held on the prior appeals that it had been shown, at a pretrial hearing on a motion of defendants to sup-

1. Harold E. Sullivan was sentenced to prison for 3 years and fined $2500 on each of counts 1 and 2, the terms of imprisonment to run concurrently. Shotwell was fined $10,000 on each count and Byron A. Cain was sentenced to imprisonment for 3 years and fined $5,000 on counts 1 and 2, the terms of the imprisonment to run concurrently.

press certain evidence, that a valid, timely, voluntary disclosure by defendants had been made. After the government petitioned the Supreme Court for certiorari to review our decision, it filed a motion to remand on the ground of newly discovered evidence, and in support of its motion filed the affidavits of defendant Frank J. Huebner[2] and H. Stanley Graflund, which the Court found contradicted the testimony on behalf of defendants on the suppression hearing. At 240, the Supreme Court stated that the new evidence cast the darkest shadow upon the truthfulness of the disclosure testimony given by or on behalf of the defendants and entailed an attempt to perpetrate a fraud upon the courts. At 241, the need of a remand to the district court for a full exploration was indicated. At 245, the Court directed that, in the further proceedings in the district court, the additional evidence to be presented be confined to the suppression issue and that on that issue the district court make such new findings of fact as may be appropriate, including findings on the question of the timeliness of the alleged disclosure.[3]

At the hearing upon remand, the district court heard the testimony of government witnesses Huebner, Graflund, Earnest C. Wright and Joseph M. Lima and the testimony of defendant Cain and several other defense witnesses. Sullivan and Leon J. Busby did not testify, although Busby did testify at the original suppression hearing.[4] The court entered an order which included a comprehen-

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2. Huebner had been sentenced to 3 years imprisonment and fined $2500 on each count, the terms to run concurrently.

3. While, upon oral argument in this court on the present appeals, government counsel expressly stated that the government makes no contention that the disclosure of defendants was untimely, the Supreme Court, at 245, note 21, pointed out that new evidence of timeliness is relevant to the question of whether a bona fide disclosure was in fact ever made.

4. 225 F. 2d 394, 399.

sive findings of facts. The trial judge analyzed the testimony of the various witnesses and found specifically, *inter alia*:

> the evidence is overwhelmingly clear that not only were substantial sums of black-market money paid to Shotwell as premium payments by Lubben[5] during 1944, 1945 and 1946 totaling between three and four hundred thousand dollars, but also that the greater part of this so-called black-market money was appropriated by Cain, Huebner and Sullivan for their own personal use.
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> * * * Busby, Shotwell's accountant, stated that he went to Sauber[6] in January, 1948, and disclosed to him that Shotwell had failed to include as income the black-market payments received from Lubben when it made its tax returns for the years 1945 and 1946. Busby stated at the first suppression hearing that he was prompted to make the disclosure to Sauber at this time because he first learned of the Lubben-Shotwell over-ceiling transactions from Graflund when the two were together on a train coming from New York to Chicago. Graflund on several occasions prior to the supplemental suppression hearing supported Busby's statement in this regard, but on the supplemental suppression hearing he testified that, in stating that he imparted this information to Busby in January, 1948, he was in error and that upon further consideration and reflection, he is now convinced that he did not tell Busby about the Lubben-Shotwell transactions until after Agent Krane had made a visit to the Shotwell plant on June 21, 1948.
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> It was not until some time in July, 1948, however, that any concerted effort was made by these defendants to make up a so-called voluntary disclosure.

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5. David G. Lubben, a witness on behalf of the government.

6. Ernest Sauber, chief deputy collector of internal revenue in Chicago

It is undoubtedly true that Cain, by reason of the lack of any records in Shotwell's possession, felt required to accept Lubben's figures of black-market transactions although he believed they were exaggerated. On the other hand, the alleged offsetting black-market payments made by Shotwell to wash out, so to speak, black-market receipts, were, as represented to the Supreme Court by the affidavits of Huebner and Graflund, concocted "out of thin air." These figures were made up at a meeting in Busby's office in July, 1948, and at the Belden Stratford Hotel during that month, where Shotwell's representatives, including Cain, Huebner and Graflund, remained for some days in attempting to devise the amount of the black-market receipts to be offset by fictitious black-market disbursements in substantially the same amount.

* * * Suffice it to say that the evidence clearly establishes that only a relatively small percentage of the black-market payments made by Lubben to Shotwell were utilized for the purchase of raw corn, * * *. When these defendants presented the so-called voluntary disclosure by way of written computations of black-market income and black-market outgo, the amounts allegedly paid for raw materials were fictitious figures selected by Cain with full knowledge that they were without verity and merely inserted in the record in order to wash out, so to speak, the black-market receipts except for some $6,000. I find, therefore, that any so-called voluntary disclosure to Sauber by Busby and Cain prior to June 21, 1948, if it be such within the purview of the voluntary disclosure doctrine, did not precipitate the investigation of the Lubben-Shotwell transactions by Krane and that it was not until after Krane's visit to Shotwell's plant that figures were presented to the Government allegedly showing the black-market receipts of Shot-

well and Shotwell's alleged premium payments for raw materials.[7]

Accordingly the court found "... that fraud permeated the showing made by these defendants before me at the original suppression hearing, as well as at the trial and the supplemental hearing, and I find that no honest, bona fide voluntary disclosure to any government official ever was made by Shotwell or these defendants with respect to Shotwell's 1945 and 1946 taxes as contemplated by the voluntary disclosure policy in existence at the time. A dishonest and false disclosure cannot be held to be a timely voluntary disclosure."

1. In *United States v. Johnson*, 327 U. S. 106, where defendant made a motion for a new trial based on newly discovered evidence, said to prove that one Goldstein, a government witness, had perjured himself, the trial judge found that none of the affidavits offered in support of the motion showed perjury on the part of Goldstein and concluded that a new trial was not warranted. A reversal by our court of his action was set aside by the Supreme Court, which held, at 111, that, while we might intervene when findings of fact are wholly unsupported by evidence, we should never do so where it does not clearly appear that the findings are not supported by any evidence.

Of course, the Supreme Court has not passed upon the correctness of the result we reached on the record before us on the former appeals, 225 F. 2d 394. We are now re-

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7. The district court at this point added in its order the following:

"This is not only the Court's conclusion based upon the entire record, but it necessarily was the jury's conclusion on the record at the trial in that the jury was expressly instructed that, if the over-ceiling payments received by Shotwell were expended for raw materials in carrying on its candy manufacturing business, then its verdict must be one of not guilty."

quired to again pass upon defendant's motion to suppress, based, however, upon a record since supplemented by the proceedings upon remand. Therefore, giving proper recognition to the additional findings of fact of the district court, we proceed to a disposition of all contentions now awaiting resolution.

In accordance with the findings of the district court, we are required to, and do hereby, hold that the defendants' motion to suppress evidence was properly denied.

2. This conclusion is not impaired by defendants' contention that the government failed to show that the decision of this court was based upon a perjurious record attributable to fraud of the defendants, nor their assertion that the "story" advanced by Huebner and Graflund "was so startling and dramatic that the Court noted a doubt as to whether the affidavits might be 'products of fraud'." The district court on remand clearly considered relevant testimony of the defendants untrue and in effect absolved the affidavits of Huebner and Graflund of the charge of fraud.

We hold that the district court on remand proceeded responsively to the Supreme Court's direction and that its use, at 235, of the words "perjurious record" obviously refers to the "shadow upon the truthfulness of the disclosure testimony" given by or on behalf of defendants, as referred to, at 240. This disclosure testimony was fully discussed by the district court in its findings on remand.

3. Defendants insist that the district judge erred in not having recused himself from the 1958 proceedings. Subsequent to the trial the judge made certain statements as to the credibility of witnesses, the nature of disclosures and inferences which he drew from the evidence. Defendants charge that it appears that he had fixed views on the subject of disclosure. However, it is not

contended that he entertained personal as distinguished from judicial bias or prejudice against defendants. Therefore, we hold that his statements were insufficient as a matter of law to require an order of recusation. *Tucker v. Kerner*, 186 F. 2d 79, 84, 7 Cir.

4. It is maintained that the district court acted arbitrarily in denying defendant Cain's motion for severance during the proceedings on remandment. His motion was supported by the affidavits of two physicians and had to do with the state of his health. The record shows that, after hearing argument on the motion, the court ordered Cain to submit to physical examination at the Public Health Service facility in Chicago. Thereafter the chief of the medical service, Dr. I. N. Zigler, submitted to the court a report of his examination and recommended a postponement of the hearing for six months "for maximum possible improvement and stabilization of Mr. Cain's cardiac status." Such postponement was had. Several months later Dr. Zigler reported to the court that Cain's appearance for four or five hours a day would not unreasonably exceed his level of tolerance. Cain renewed his motion and submitted affidavits of two physicians. In view of a conflict in the medical testimony, by agreement of counsel, the court appointed two physicians to examine Cain and advise the court as to his ability to attend the further hearing. That was done and their reports are in the record. The court denied a motion for further postponement. The reports justified this action.

We cannot say that the court's action was arbitrary or the result of an abuse of discretion.[8]

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8. It should be noted that Cain's continued presence at the hearing of the motion for suppression was not required by Rule 43 of the Federal Rules of Criminal Procedure. 18 U. S. C. A., Rule 43.

5. In July 1957, almost four years after the verdict, appellants, alleging newly discovered evidence, filed amended motions to dismiss the indictment and in arrest of judgment, for the purpose of challenging the arrays of the grand and petit juries on the ground that the panels were illegally constituted.

Defendants contend that the arrays of the grand jury and the petit jury were improperly selected because "volunteers are not competent as jurors in Illinois and therefore were not competent federal jurors in 1952 and 1953," and "the jury commissioner delegated his non-delegable duties."

Rule 12(b) (2) and (3), Federal Rules of Criminal Procedure,[9] reads:

> (b) The Motion Raising Defenses and Objections.
>
> • • • • • •
>
> (2) Defenses and Objections Which Must Be Raised. Defenses and objections based on defects in the institution of the prosecution or in the indictment or information other than that it fails to show jurisdiction in the court or to charge an offense may be raised only by motion before trial. • • • Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. • • •
>
> (3) Time of Making Motion.
> The motion shall be made before the plea is entered, but the court may permit it to be made within a reasonable time thereafter.

In denying the motions, which ruling defendants now say was erroneous, the district court held that defendants "failed to establish any sufficient grounds which [would] justify the granting of relief from the waiver." However, exhibiting an extraordinary desire to cover all points, he

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9. 18 U. S. C. A., Rule 12 (b) (2) and (3).

then found that the jurors, grand and petit, possessed the necessary legal qualifications for jury service and that no one was excluded because of race, color, economic status, political conviction, geographical location, religious beliefs or social status, and that there was no showing that the use of volunteers to the extent of one member of the petit jury and five members of the grand jury, precluded defendants from having a grand jury or a trial jury truly representative of a cross-section of the community, or that the use of volunteers resulted in the intentional or negligent exclusion or discrimination against any individuals or groups.

Inasmuch as defendants have not shown that these findings are without support in the record or that they were actually prejudiced by the method by which the jurors were selected, we hold that their motions were properly denied. *Dow* v. *Carnegie-Illinois Steel Corp.*, 224 F. 2d 414, 427, 3 Cir. See *United States* v. *Smith*, 253 F. 2d 95, 7 Cir. Cf. *Glasser* v. *United States*, 315 U. S. 60, 86.

6. Defendants contend: "If the evidence taken in the light most favorable to the Government fails to prove an essential element of the crime charged, no matter what else it may have tended to prove, the convictions must be reversed." This amounts to a challenge of the sufficiency of the evidence to support the verdict. We hold that the evidence, viewed in the light most favorable to the government, is sufficient to sustain the verdict.

7. Defendants assert that the district court should have granted a new trial in 1953 for additional errors committed at the trial.

First, we hold that, before the jury, a certain part of Cain's testimony at the suppression hearing was not improperly introduced, because it was in effect an admission against interest that Shotwell's unreported black-market receipts approximated $400,000.

Secondly, defendants charge that the court should have excluded certain documents described as "disclosure recapitulations", which were offered by the government on the cross-examination of Cain and also in rebuttal. Defendants insist that these documents were inadmissible because they constituted an offer in compromise. However they were not executed for that purpose, as Cain testified at the time that Shotwell was ready and willing to pay the full amount of tax claimed by the government and that it would endeavor thereafter to recover what it could. We hold that this evidence was admissible. A distinction is drawn between an offer to do something in furtherance of a compromise, which is held to be inadmissible, and independent admissions of fact, which may be admitted. Cf. *Cooper* v. *Brown*, 126 F. 2d 874, 878, 3 Cir.

Thirdly, defendants insist that the court erred in denying their motion to strike certain parts of Lubben's testimony and various exhibits, including books of account, introduced by the government. They argue that allowing all the testimony as to over-invoice payments during the entire two years tended to convict the individual defendants of evasion of personal income taxes and confused questions of corporate and individual income.

Both sides refer to Lubben's testimony as to shipments of candy by Shotwell to Lubben, and admit that he testified that when he paid over-ceiling cash premiums to Huebner, Shotwell's general manager, Huebner counted the currency into three piles, saying one was for himself, one for Cain, and one for Sullivan.[10] Lubben's books were admitted into evidence and defendants contend that they were not regularly kept so as to import verity according to legal standards. Defendants also assert that the testi-

10. Certain evidence offered by the government, such as the "three-pile" testimony was not admitted as to Sullivan. *Post* 11.

mony of Lubben completely destroyed the evidentiary basis for the books as showing payments of overages to Shotwell. This is not a case where a cause of action was based upon the books of account and hence precise compliance with the law as to the keeping of records was not required. The issues in this criminal case were to be decided by the jury upon all of the relevant evidence, which included, *inter alia*, these books, which admittedly were not perfect. The weight to be given to them, in connection with the other evidence, was for the jury to decide. The books were offered as proof of a part of a factual situation and were to be considered for what they were worth. There was no error in refusing to strike this evidence.

We are convinced that these attacks on Lubben's testimony and his books of account, as evidence, relate to the weight to be given to evidence rather than its admissibility. No error is shown in these respects.

Fourthly, defendants complain that their cross-examination of Lubben was unreasonably curtailed.

Our examination of the record refutes this complaint. While the extent of cross-examination is within the sound discretion of the trial court, *Alford* v. *United States*, 282 U. S. 687, 694; *Glasser* v. *United States*, 315 U. S. 60, 83, the record demonstrates that, not only was there no abuse of discretion here, but the court allowed extreme latitude to all three defense counsel who cross-examined Lubben, over a period of four days. It is obvious that the court imposed limitations upon inquiries which related to irrelevant transactions of Lubben with other parties.

Fifthly, defendants contend that there was error in the giving and refusal of instructions.

They say that fundamental errors were carried into the instructions which "specifically told the jury they could

take Lubben's so-called records into account in determining whether the overages constituted income to Shotwell".

They say that the "crushing effect of the charge can be appreciated only be reading it in its entirety". We have read it. The court was engaged in informing the jury as to the contentions of the parties and he made it plain that that was the purpose of his statement. We believe that he succeeded in making a simple and clear explanation which was understandable to the jurors. While admitting that the court stated that he was merely reciting the government's contentions, defendants insist that the court nowhere made any clear and understandable delineation, as he easily could and should have, between what was strictly government contention and what he was assuming as an undisputed fact or an undisputed principle of law. We have no reason for the assumption implicit in defendants' contention, that there was such a lack of intelligence upon the part of the jurors as is needed to conclude that they must have disregarded the orderly sequence and division of the judge's charge, *United States* v. *Bruswitz*, 219 F. 2d 59, 63, 2 Cir., cert. denied, 349 U. S. 913.

Defendants criticize this part of an instruction:

> "• • • It is the taxable income of individuals, partnerships and corporations which forms the principal revenue for the support of the Government. The wilful violation of the income tax laws of the land is, therefore, a matter of great concern to the Government, and those guilty of such an offense and proven to be guilty should be speedily found guilty by a jury chosen in such trial."

They say that it reads like a prosecutor's argument. However, the quoted language is lifted out of context. The following language preceded that quoted:

> "I take it, members of the jury, that it is not neces-

sary for me to remind you that this case is important. It is important to the Government. *It is important to these defendants.*" (Italics supplied.)

We are certain that the jury understood that the court was merely impressing it with the important duty which the jury was called upon to perform and its consequent effect upon both the government and the defendants on trial. We see no error here.

Defendants charge that the court's instruction relative to the disclosure claimed to have been made by the defendants was grossly prejudicial. On that issue defendants tendered this instruction:

> "In determining whether the defendants, Byron A. Cain, Harold E. Sullivan, Frank J. Huebner and The Shotwell Manufacturing Co., or any one or more of them had a specific intent to defeat or evade taxes owing to The United States from the corporate defendant at the time the tax returns of the corporate defendant for the years 1945 and 1946 were filed, you may take into account, together with all other evidence bearing on the issue of intent, the actions of the defendants pursuant to the voluntary disclosure policy."

The court endorsed thereon the words "Granted in Substance". It however gave to the jury instead, the following instruction:

> "The fact that the defendants may have assumed that their disclosure granted immunity to the Shotwell Company, and to the individual defendants herein, is no defense in this proceeding, and as I have stated, and I repeat again, it is only material in so far as it may bear upon the intent of the individual defendants, or the intent of the Shotwell Company to violate the income tax laws, and their good faith, or lack of good faith in doing that, which they did do in reference to their alleged disclosure, and in so far

> as it may have a bearing upon any of the acts, admissions, conduct et cetera, which may have taken place during such alleged disclosure."

Both the tendered instruction and the given instruction were meant to submit to the jury the question of defendants' intent in the matter. We find no basis for error that the court gave to the jury but one of them, which itself was correct.

We hold that no error was committed in the court's refusal to grant a new trial to defendants.

8. In their briefs, defendants Shotwell and Cain contend that it was the duty of the district judge to order a new jury trial, when, on the hearing on remandment, he found Lubben's testimony was "exaggerated". This simple as well as direct approach to their objective is based upon their characterization of the word "exaggerated" as a mere euphemism for perjury. The government, in its brief, contents itself by ignoring this contention. While we do not ignore it, we find it unconvincing. The court did state on remandment

> "• • • that Lubben may have exaggerated the amounts of the payments that he and his confederates made to Shotwell is entirely probable."

We cannot say that this amounts to a charge of perjury. Suffice it to say that Lubben's testimony was not the only evidence to support the verdict and the judgments. Moreover his credibility was a question for the jury. The court did not err in not ordering a new trial because of these facts.

9. In this court a separate brief has been filed by defendant Harold E. Sullivan.[11] He was a director and gen-

11. While much of this opinion has obviously referred to all of the defendants, this division relates principally to defendant Sullivan.

eral counsel for Shotwell at a salary of $600 a week. On July 1, 1946 he became executive vice-president. He practiced law and was a master in chancery of an Illinois court. He and his family owned 20%, and later 33%, of Shotwell's stock.

In September or October 1946, in Sullivan's office on Dearborn Street, Chicago, Lubben talked with Sullivan, who told him that he wanted no checks and asked whether the cash transactions were being recorded in Lubben's books. He was assured that they were not. Sullivan said, "Well, Dave, you know how it is. You have * * * a farm in New Jersey. This money I have been using in my farm. * * * I am getting a new driveway, * * *. That is the only way I can do it today, with the tax situations the way they are."

Both Cain and and Sullivan repeatedly impressed upon Lubben that the corporation was not reporting the cash receipts as income, and that no records of his cash payments should be kept. Lubben did in fact make and retain some record of many of the payments.

Martin A. Erieson, Shotwell's shipping superintendent, testified that Sullivan was present in March 1946 when there was a conversation to the effect that, when shipping candy to Lubben, the name "ABC Company" was to be put on the bills of lading as shipper instead of Shotwell.

Howard Roser, comptroller of Shotwell, testified that the monies put in a cash box he gave out to Sullivan, Cain and Huebner.

As a witness, Sullivan denied that he personally received any of the cash paid by Lubben.

The government contends that, viewing the record in the light most favorable to the government, there is ample evidence to support the verdict as to Sullivan. On the other hand, Sullivan contends that the government's case

against him was based upon a single alleged admission which the government's principal witness Lubben said Sullivan made to him in Sullivan's office.[12] We are of the opinion that the jury was warranted in finding from the direct and circumstantial evidence in the record, and the inferences which might be reasonably drawn therefrom, that Sullivan's acts, statements and his status in the management of Shotwell, coupled with his knowledge of its operations with Lubben, made him aware of and a participant in the acts constituting the offenses charged in the indictment.

10. Certain evidence was admitted but the jury was instructed by the court not to consider it against Sullivan. This evidence related to the "three-pile testimony", the recapitulation statements and extracts from Cain's testimony at the suppression hearing. When this evidence was admitted the court admonished the jury that it was not to be considered against Sullivan. From time to time, the court repeated this admonishment at the request of counsel for Sullivan. The court also in its final instructions informed the jury:

> "Any statement or act of any of the defendants not in the presence of another defendant is not binding upon the absent defendants, even though one or more of the defendants were mentioned in the conversation, nor are such matters competent evidence against any other defendant not present. I have limited, you will observe, certain evidence during the trial, from time to time, as being competent only as to certain defendant or defendants, that is, by way of example, what Mr. Huebner, or Mr. Cain may have said or done in the absence of Mr. Sullivan, would not be binding or competent as to Mr. Sullivan. * * *"

12. The date of this admission was first given as February 14, 1946 and later corrected by the witness Lubben and fixed as September or October, 1946, *ante* 13.

These limiting instructions are clear. It must be presumed that the jury conscientiously observed them. *United States* v. *Harris*, 211 F. 2d 656, 659, 7 Cir., cert. denied 348 U. S. 822.

11. Sullivan argues that it was error for the court to instruct the jury as follows:

> "Under our laws, every defendant who is charged with a crime is presumed to be innocent. Now, that presumption remains with him throughout the entire trial, until that time, if that time is reached, that the Government has established his guilt beyond a reasonable doubt. The defendants here are entitled to the benefit of that presumption, and it is for you to determine, members of the Jury, whether or not the guilt of any of the defendants has been established beyond a reasonable doubt."

While there is language in this instruction which was termed "inept" in *Lurding* v. *United States*, 179 F. 2d 419, 422, 6 Cir., "unless accompanied by some instruction that directs a consideration of all the evidence", here the jury was repeatedly directed to consider *all* the evidence.[13]

13. For instance, the court instructed the jury:

> "On the other hand, if you do not have after a full and fair consideration of all the evidence and testimony, an abiding conviction of the guilt of any defendant charged herein, amounting to a moral certainty, then the guilt of such defendant has not been established as the law requires, and it would be your duty to return a verdict of not guilty as to such defendant or defendants."
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> * * * * *
>
> "'Direct proof of wilful intent is not necessary. * * * It is a question of fact, members of the jury, to be determined from all of the evidence."
>
> * * * * *
>
> "* * * The truth as to when the overages began, their duration, and their amount is a matter, and an important matter, which you will have to determine from all the evidence introduced."
>
> * * * * *
>
> "'Well, members of the jury, you will have to determine the

We have considered all of the alleged errors urged by defendants and we find that none of them would justify reversal. On the complete record now before us, we are required to affirm the judgments from which appeals have been taken by Sullivan, Cain and Shotwell.

JUDGMENTS AFFIRMED.

true, the believable and the plausible and reasonable facts in that regard from all the evidence which you have heard. * * *

* * * * *

"The question is, therefore, members of the Jury, whether you are convinced from all the evidence that there were taxes due the Government for the years in question in amounts substantially higher than those reported and paid by the corporation to the Government, and whether you are convinced from all the evidence, beyond a reasonable doubt, that there was a wilful attempt by the defendants, or any of them in such years to evade or defeat any substantial part of such income tax by filing or causing to be filed a false and fraudulent return for the corporate defendant for the years in question."

* * * * *

"* * * You have a right to make use of your own common observations, and experience, as men and women in the affairs of life and consider all the evidence in the light of your common observations and such experience, and ascertain where the truth may be on any material fact in this case."

* * * * *

"* * * If you find upon an impartial consideration of all the evidence in the case that the evidence supports and sustains two reasonable theories and that one of such theories is consistent with the guilt of the defendant, and that the other such theory is consistent with the innocence of the defendant, then the law makes it your duty to adopt the theory that is consistent with the innocence of said defendant and find him not guilty."

APPENDIX C.

Opinion of District Court With Respect to Jury Selection Procedures

ORDER.

Defendants The Shotwell Manufacturing Company, Byron A. Cain, and Harold E. Sullivan have filed a motion for leave to withdraw their respective pleas of not guilty and to file instanter (1) an amendment to their motion to dismiss the indictment herein; (2) an amendment to their motion for a new trial; (3) an amendment to their motion in arrest of judgment; and (4) an amendment to their motion for judgment of acquittal notwithstanding the verdict.

Mr. George B. Christensen, of Chicago, Illinois, appeared in behalf of The Shotwell Manufacturing Company and Byron A. Cain;

Mr. William T. Kirby, of Chicago, Illinois, appeared in behalf of Harold E. Sullivan;

Mr. Vincent P. Russo, Special Attorney, Department of Justice, Washington, D. C., appeared in behalf of the United States of America.

The proposed amendments to the original motions are all predicated upon alleged newly discovered evidence not known to the defendants and which was not reasonably to be anticipated or discovered by them at the time of the filing of their original motions herein. The alleged newly discovered evidence upon which the motions to amend are

based may be summarized as follows: (1) The array of grand jurors which indicted these defendants did not constitute a fair cross-section of the community; (2) the officials in charge of the jury selection procedures of this Court utilized methods in the selection of the grand jurors who indicated these defendants whereby they arbitrarily, intentionally and systematically excluded various classes of people residing within the jurisdiction of this Court who were eligible and qualified for general jury service; (3) the officials in charge of the jury selection procedures of this Court utilized methods in the selection of the grand jurors who indicted these defendants whereby discrimination was practiced against various classes of people who were eligible and qualified for general jury service; and (4) the officials in charge of the jury selection procedures of this Court illegally and improperly delegated their duties in connection with the selection of the grand jury which indicted these defendants.

Later, the defendants amended their amended motion by alleging that the newly discovered evidence included errors in the selection of the petit jury; that is, it is charged that the petit jury finally selected in the trial of these defendants was not lawfully constituted; that the jury contained persons incompetent to serve as jurors under the law of Illinois and of the United States; and that the members of the venire and the jury were initially selected through discriminatory and illegal practices of the Clerk and the jury commissioner and through an unlawful delegation of the powers of the jury commissioner. The parties stipulated that the motions be submitted on the record of the proceedings before the Honorable John P. Barnes, United States District Judge, Northern District of Illinois, as such proceedings appear in the appendix in support of a petition for a writ of mandamus filed in the United States Court of Appeals for the Seventh Circuit

in Harold E. Sullivan, et al., Petitioners *vs.* United States District Court, Respondent, No. 12,140; the affidavit and supplemental affidavit of Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, dated February 17, 1958, and May 1, 1958, respectively; and the testimony of Richard Jongsma given before this Court on April 21, 1958.

At the outset, it should be stated that the indictment herein was filed on March 14, 1952. The defendants were arraigned on June 24, 1952, and entered pleas of not guilty. The trial commenced on September 15, 1953, and was concluded on October 16, 1953. Thereafter, the motions which are now sought to be amended were made and denied, sentences were imposed, appeals were taken, and on June 15, 1955, the Court of Appeals for the Seventh Circuit reversed the judgments, with instructions to sustain defendants' motions, as amended, to suppress evidence, and to retry the case. On writ of certiorari to the United States Court of Appeals for the Seventh Circuit, the United States Supreme Court on December 16, 1957, vacated the judgment of the Court of Appeals and remanded the case to the District Court for proceedings consistent with the opinion. The proceedings now before this Court are limited to the so-called suppression issue. However, the defendants on July 9, 1957, filed their motion for leave to withdraw their respective pleas of not guilty and to file amendments to their original motions as noted above. These motions, as amended, therefore, are now before me and are defendants' first challenge to the grand jury and the petit jury array or panel as indicated above.

Defendants style their motions as being based upon newly discovered evidence. Of course, any errors in the selection of the grand or petit jury are not newly discovered evidence within the ordinary meaning of that term. No objection was made to the membership of the petit

jury when it was finally obtained. The men and women who comprised the jury evidently satisfied the defendants as to its composition. No contention was made that the jury was not a "body truly representative of the community." *Smith* v. *Texas*, 311 U. S. 128, 130. Nor is there any showing now that the jury did not "comport with the concept of the jury as a cross-section of the community." *Glasser* v. *United States*, 315 U. S. 60, 86. Defendants are attempting to challenge the jury panels, grand and petit, in a collateral proceeding under the guise of newly discovered evidence. Any right to *make such an attack* has been waived. See *Tracy* v. *Terminal R. Assn. of St. Louis*, 8 Cir., 170 F. 2d 635, 640, and cases cited therein. In addition, attention may be called to Rule 12(b)(2), Federal Rules of Criminal Procedure. This rule provides:

> "Defenses and objections based on defects in the institution of the prosecution, or in the indictment or information other than that it fails to show jurisdiction in the court or to charge an offense may be raised only by motion before trial. * * * Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver."

There is an absence of any showing here which would justify the Court in granting relief from the waiver. It is true that the defendants contend that they were not apprised of the alleged improprieties in connection with the composition of the grand jury until shortly before they filed their motion. But the method of selecting jurors in this District by the Clerk and jury commissioner had been followed for years. Inquiry as to the system employed could have been made at any time. Indeed, there was publicity as to some phases of the jury selection which appeared in the Press; that is, as to volunteers being accepted by the officials. The same observation may be made with reference to the composition of the petit jury.

The defendants do not contend that any irregularities in the selection of the grand jury resulted in any prejudice, nor is there any showing that the grand jury did not truly represent a cross section of the community. The Court concludes that the defendants have failed to establish any sufficient grounds which justify the granting of relief from the waiver.

But notwithstanding the Court's view that the defendants have lost their right to withdraw their pleas of not guilty and to urge the motions based upon the alleged errors in the selection of the grand and petit juries, brief comment will be made as to the factual situation which is urged by defendants in support thereof.

During the years in question, federal jurors, both grand and petit, were required under federal statutes, among other things, to be competent to serve as jurors under the laws of the State in which the District Court is held. The statutes of Illinois required that in counties of over 140,000 inhabitants, jurors are to be chosen by jury commissioners who are required to prepare jury lists from 'voters' lists. Apparently the Clerk of Court and the jury commissioner in the Northern District of Illinois, for many years prior to the return of the indictment herein, had not followed that practice. These officials obtain jurors largely from five sources: (1) The membership lists of private organizations; (2) nominations by postmasters in areas outside of Cook County; (3) telephone directories; (4) nominations made by former jurors; and (5) volunteers. In following this method of selecting jurors, it clearly appears that both the Clerk of Court and the jury commissioner took pains to obtain a jury representative of the economic, social, religious, racial, political and geographical groups in the District. Questionnaires were sent to all prospective jurors, and depending upon the answers given therein, the officials determined whether the persons

would be suitable jurors. Consequently, although the method employed by the Clerk of Court and the jury commissioner in selecting jurors did not strictly comply with the state law, in that sources other than voters' lists were utilized, the jurors, grand and petit, possessed the necessary legal qualifications for jury service. Lists of prospective jurors were obtained from church organizations, labor groups, clubs, and, as stated, recommendations were received from former jurors and postmasters, and resort was made to telephone directories for supplemental names. But the officials made the decision as to which names went into the jury box. No one was excluded because of his race or color, economic status, political convictions, geographical location, religious beliefs, social status, or because he was rich or poor. This method of selecting jurors was sanctioned in *Scales* v. *United States*, 4 Cir., 227 F. 2d 581, 592; *Walker* v. *United States*, 8 Cir., 93 F. 2d 383, 391; *United States* v. *Brandt*, D. C. Ohio, 139 F. Supp. 349, 360.

Under the circumstances disclosed herein, as indicated in *Glasser* v. *United States*, *supra*, p. 86, "Officials charged with choosing federal jurors may exercise some discretion to the end that competent jurors may be called." Blindly selecting names from voters' lists, without more, would afford scant information which would enable the officials to determine whether any array of jurors were truly representative of a cross-section of the community. The utilization of voters' lists for prospective jurors would insure a list of citizens but would afford no other aid in obtaining a representative jury. There is no showing here that either the personnel of the grand jury in question which indicted these defendants, or the petit jury before whom they were tried, did not fulfill the essential characteristics which have made the American jury system one of the cherished features of our institutions.

Glasser v. *United States*, *supra*, p. 86. It is to be doubted that defendants have a vested right in any specified method of selecting jurors if the means utilized affords them the type of jury that the law contemplates. In view of the discretion which is necessarily lodged in officials who compile jury lists, it seems apparent that the jurors selected from the sources indicated above would not be incompetent under the state law. *United States* v. *Dennis*, 2 Cir., 183 F. 201, 221. I find, therefore, no merit to defendants' contentions that their motions should be granted merely because the officials did not make up their jury lists solely from voters' lists. No Illinois case has been cited which supports defendants' position that state jurors obtained by a jury commissioner from sources other than a voters' list renders such jurors incompetent for jury service.

It is conceded that both the Clerk of Court and the jury commissioner from time to time during the period in question called for volunteers. Apparently that practice arose when certain citizens complained in the Press that they had never been called for federal jury service. In any event, the practice of calling upon various persons to canvass their organizations for individuals who would be willing to serve upon the federal jury prevailed. Some persons appeared personally before the Clerk of Court and volunteered their services as jurors. No one contends, however, that these volunteers sought jury service for any ulterior purpose, or with the idea of being selected as jurors on any particular panel. It is fair to assume that such volunteers were prompted solely by a bona fide desire to have the experience of serving as jurors in federal courts, and the officials presumably faced with the never-ending problem of obtaining jurors in a large metropolitan area availed themselves of that method which seemed to facilitate their trying and burdensome search for available jurors. The Court's at-

tention has not been called to any Illinois statute which precludes the use of volunteers for jury service other than Section 13, Chapter 78, Illinois Revised Statutes, which provides that when a venire is exhausted and the Sheriff must summon talesmen, volunteers must not be accepted. Under such circumstances, the statute provides that

> "Any person who seeks the position of a juror, or who asks any attorney or other officer of the court or other person to secure his selection as a juryman, shall be deemed guilty of a contempt of court, and be fined not exceeding twenty dollars ($20), and shall thereby be disqualified from serving as a juror for sixty days thereafter, and such fact shall be sufficient ground for challenge. Any attorney or party to a suit pending for trial who shall request or solicit the placing of any person upon a jury, shall be deemed guilty of a contempt of the court and be fined not exceeding one hundred dollars ($100.00), and the person so sought to be put upon the jury shall be disqualified to serve as a juror for sixty days."

But regardless of any specific statute which precludes the use of volunteers on a jury list, it is generally recognized that the selection of jurors must be carefully guarded so that men and women who perchance may have ulterior purposes are not permitted to volunteer for jury service. Many States have strict injunctions against anyone being permitted to serve as a juror if he volunteers. But here there is an absence of any showing or contention that any of the so-called volunteers sought jury service because they wanted to sit as grand or petit jurors in any matters pertaining to these defendants or for any improper purpose. It is the system which may lead to abuses that the law condemns, and it does not necessarily follow that a volunteer may not be a perfectly competent juror. The fact that a juror has volunteered for jury service in response to a request of the Clerk of Court or the jury commissioner does not imply that such person may have some philosophy

to forward law enforcement against those charged with crime, or to aid those accused of crime. Their willingness to serve may be prompted by a high sense of duty as citizens. The term "volunteer" should not include those who are recommended for jury service by postmasters, or other jurors, or by individuals connected with various groups, in absence of a showing that the prospective juror submitted to the officials a request that his or her name be sent in for jury service. Moreover, non-volunteer prospective jurors to whom questionnaires were sent and who later inquired as to the delay in being called as jurors are not volunteers if they are subsequently put on the jury list by the Clerk of Court or jury commissioner. A fair analysis of the record would indicate that one member of the petit jury and five members of the grand jury were volunteers.

There is no showing or contention that the so-called volunteers were not men and women who were jurors fully competent as citizens to be on the jury panels in question. There is no showing that the use of volunteers, as far as this trial is concerned, precluded the defendants from having a grand jury or a trial jury composed of men and women who were truly representative of a cross-section of the community from which the jurors were drawn. There is no showing that the use of volunteers resulted in the intentional or negligent exclusion or discrimination against any individuals or groups of individuals. We have a situation here, therefore, where the grand and petit juries are completely invulnerable from attack, except that some of them volunteered for jury service. Although the use of volunteers in obtaining jurors for federal courts may not be approved because of the inherent dangers in employing such a method, there is no evidence that the acceptance of volunteers in this District excluded any cognizable group or deprived these defendants of the type of grand or petit

jury which measured up to the standards set forth in *Glasser* v. *United States, supra.* See also *Dow* v. *Carnegie-Illinois Steel Corporation,* 3 Cir., 1955, 224 F. 2d 414.

The other matter raised by the motion pertains to the alleged delegation of duty in the selection of jurors by the jury commissioner, Mr. Crooks, to an assistant in Mr. Crooks' private business. In considering this aspect of the motion, one must recognize that there are many ministerial duties in the selection of jurors; that is, in sending out inquiries to various organizations for a list of their members who are eligible for jury service, the utilization of a questionnaire in following up the names thus submitted, the canvassing of the questionnaires to determine whether the prospective jurors are eligible for service or otherwise. Jury commissioner Crooks delegated many of these ministerial duties to an assistant, Mr. Richard Jongsma, but the list of jurors which was finally submitted by the jury commissioner to the Clerk of Court was approved by him. Mr. Crooks was the official who made the decision as to the names that should be sent into the Clerk of Court as prospective jurors, although he delegated many of the ministerial duties to Jongsma. It seems reasonably clear that whatever Jongsma did in connection with the compilation of names for jury service, such work was done under the direct supervision of Mr. Crooks. True, a jury commissioner cannot delegate the authority vested in him under the law. He alone must be clothed with the final decision in determining the list of available jurors which should be sent to the Clerk of Court, but a delegation of ministerial and routine duties of a jury commissioner in screening out the ineligible from the eligible does not prevent the jury commissioner from exercising his judgment as to the list of names which shall finally be submitted to the Clerk of Court. And whatever work Mr. Jongsma did in assisting Mr. Crooks, there is no showing that it resulted

in any arbitrary exclusion of any class of people, or any discrimination against any class or groups of people. And there is no showing that the performance of such ministerial duties by Mr. Jongsma did not afford a list of jurors which were a fair and impartial cross-section of the community. To condemn, therefore, as an illegally constituted grand or petit jury by reason of the work that Mr. Jongsma did in assisting the jury commissioner, seems unwarranted. Suppose, for instance, that a postmaster was asked to submit a list of prospective names of jurors to the Clerk of Court, and if in a postmaster's investigation he eliminated certain names and exercised his discretion in compiling the final list submitted to the Clerk, and if the Clerk, after reviewing the list, determined that the men and women were eligible for jury service, it could not be urged that the utilization of the postmaster's services as indicated was in any way an unlawful delegation of the duties which rested upon the Clerk of Court. The assumed situation is fairly comparable to the present one. There is no showing here that the final approval of the names submitted for jury service did not rest with the jury commissioner. That is determinative of any objection to the system which was followed.

The Court concludes, therefore, that the motions of the defendants, and each of them as noted above, must be and the same hereby are in all things denied. It is so ordered. An exception is allowed.

Dated this 20th day of August, 1958.

Enter:

Gunnar H. Nordbye,
United States District Judge.

white

APPENDIX D.

ACCOUNTS RECEIVABLE

Sales, 11/1/44 - 12/31/44 (Price adjustment)		2983700	
Less, corrections invoices			
# 54263, shown $5401.00 Sh. by	108020		
543889 " 5632.00	112640		
$11033.00	220660	882640	
Net sales, 1944			2101060
Collections, 1944			1170000
Balance due, 12/31/44			931060
Sales, 1945: (Price adjustment)			
1/1/45 - 5/31/45		9149550	
6/7/45 - 11/28/45 (unverified approximation)		8578630	
11/28/45 - 12/31/45		2682330	20410510
			21341570
Collections, 1945			19842984
Balance due, 12/31/45			1498586
Sales, 1946:			
Price adjustments	13692380		
Unbilled shipments	6573464	20165844	
Less, items uncollected due to financial difficulties		4861470	
Net sales, 1946			15304854
			16802940
Collections, 1946			16802940
Balance due, 12/31/46			--

CASH ACCOUNT

	1944	1945	1946
RECEIPTS (Collections)	$1170000	$19842984	$16802940
Bal ford		1170000	16129840
	1170000	21012984	18[illegible]
DISBURSEMENTS:			
Chocolate		4500000	
Milk		3000000	1500000
Corn syrup		1200000	8777500
Cocoa beans		3200000	
Cocoa bean deal		3000000	
Sugar deal		3700000	5482500
Sales expenses & unallocated		1800000	20661[illegible]
TOTAL DISB.	--	19400000	17826124
CASH BALANCE	1170000	16129840	589800
DEPOSITED IN BANK 7/25/46			589800

5611

ANALYSIS OF TRANSACTIONS BETWEEN SHOTWELL AND DAVE LUREN, (GEN COUNSEL EARLY) 1944

Invoice No	Date	Invoice Amount	Net Weight	Description	Shotwell Recorded Per Lb.
A 24487	8/8/44	$ 1501.30	10000#	Cocoa powder	—
			5010	Cotton drops	—
23608	8/12	651.30	5010	Cotton drops	—
51010	11/9	618.75	7500	Spice Cottons	—
51777	11/13	1086.75	13420	Spice Cottons	—
51884	11/17	980.20	11760	Spice Cottons	—
51878	11/16	744.980	9030	Spice Cottons	—
51607	11/20	1133.55	13740	Spice Cottons	.10
51491	11/22	845.67	10590	Spice Cottons	.10
51939	11/25	1259.778	15270	Spice Cottons	.10
52163	11/27	137.566	10802	Cotton drops	.10
52388	11/30	1868.382	11264	Cotton drops	.10
55915	12/6	1557.75	20100	Gum drops	.10
52159	12/8	1837.45	23336	Gum drops	.10
52492	12/9	1557.75	20100	Gum drops	.10
57659	12/12	1818.15	23460	Gum drops	.10
60254	12/26	1587.98	20490	Gum drops	.10
TOTAL (Recorded Sales)		14031.33			

Added from X records:

27973	9/8	651.30.
31532	9/21	595.00.
33344	8/10	74.38
35873	8/21	159.38
38167	9/2	152.00
TOTAL (Recorded Sales)		1633.06

X 1961 11/15

X 1979 1/6

Completion of Price Adjustment	Memo Entries from Luboviz Record			
Total	H.S. Records	H.S. Added	Paid To Shotwell	Paid To Others
	$ 1501.30	$ ---	$ 1501.30	
	651.30	---	651.30	
	1368.75	750.00	618.75	$ 750.00 (Luboviz)
	1086.75	174.00	1024.75	
	980.20	117.00	970.00	
	1044.98	903.00	741.98	
1374.00	2507.55	1374.00	1133.55	
1059.00	1941.68	1059.00	882.68	
1527.00	2786.78	1527.00	1259.78	
1030.20	1168.76	220.00	(948.76)	(220.00)
1176.60	7096.26	5832.00	(1263.74)	
20.00	3567.75	2010.00	1557.75	
33.60	2085.45	1953.00	132.45	
20.00	3527.75	2010.00	1557.75	
23.60	2168.15	2346.00	1918.15	
20.00	1631.98	1049.00	582.98	
16.90	15.00	—	65.30	
	9.500	—	59.500	
	74.38	—	74.38	
	159.38	—	159.38	
	153.00	—	153.00	

6750.00 (Luboviz)

4000.00 B. to Luboviz

TOTAL (Used on Disclosure Page) $ 5750.00

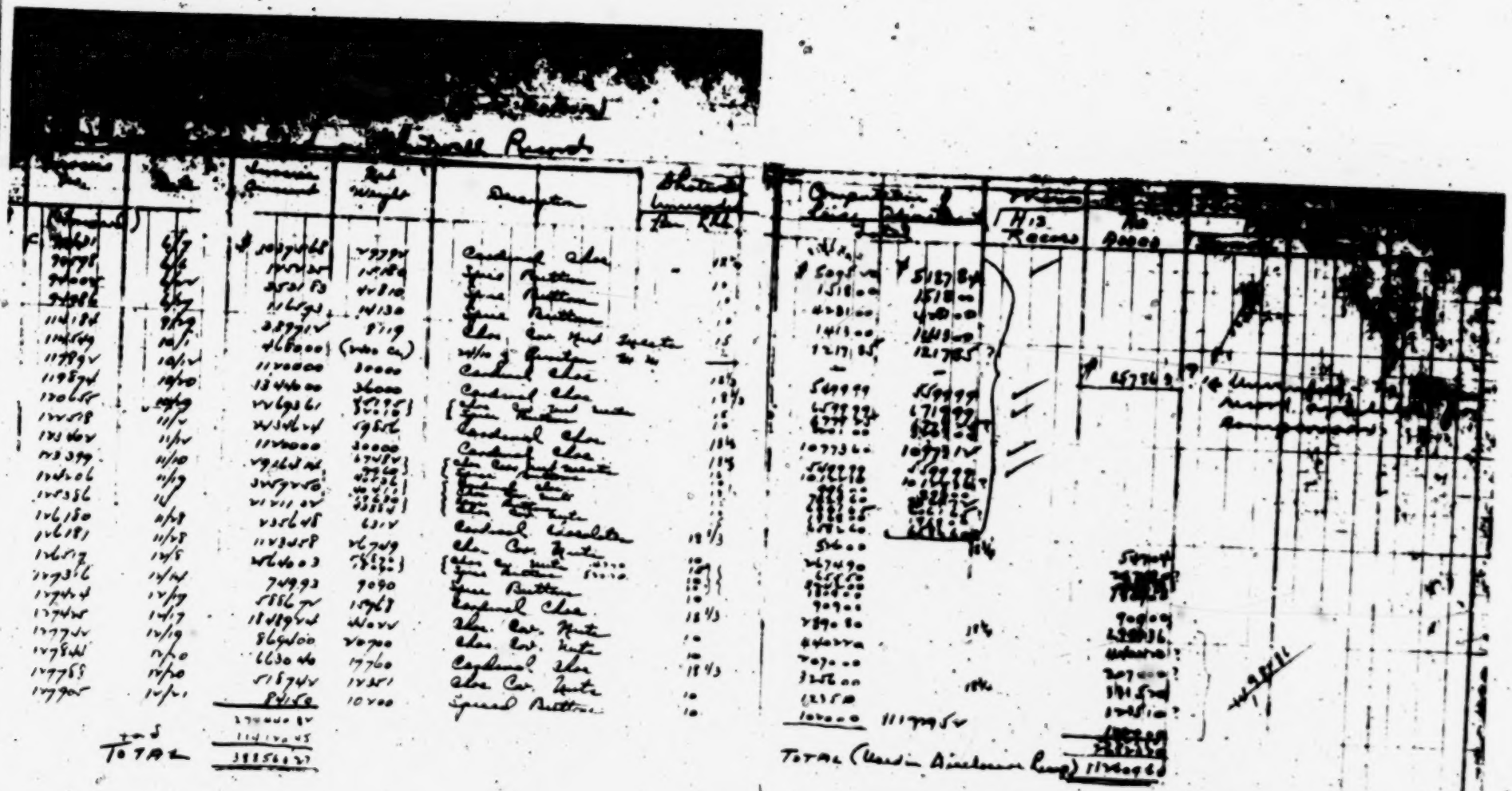
3091

#2
3099

Analysis of Transactions, Between Shotwell and Dave Lubben, (Gen Contr., Eatsum)
1945

Sales as recorded on Shotwell Records

Invoice No.	Date	Invoice amount	Net weight	Description	Shotwell Invoice Extended	Per lb.	Competition & Price Adjustments	Total	Mine Tailings Items	Shotwell Records	Paid To Shotwell	Paid To Others	Shipped To
C 65052	1/5	$ 269700	34500	Lime Escape				345000		$ 617700	$ 345000	$ 272700 (Lime Escape)	
61904	1/9	140805	17310	Spec Buttons				173100		315908	173100	142808	
61502	1/10	125930	15400	Spec Buttons				154000		279130	154000	125730	
59981	1/13	110634	13410	Spec Buttons				134100		244733	134100	110633 (Lime Escape)	
63530	1/16	129938	15750	Spec Buttons				157500		287438	157500	129938	
60 76	1/16	128700	15600	Spec Buttons				156000		284700	156000	128700	
662 3	1/19	137875	16500	Lime Escape				165000		302875	165000	137875 (Lime Escape)	
61259	1/20	108345	13950	Lime Escape				139500		248145	139500	108645 (Lime Escape)	
685	1/16	103463	13350	Lime Escape				133500	$	234963	133500	101463 (Lime Escape)	
70152	1/16	115583	14010	Spec Buttons				140100	16405.00	255683	140100	115583	
70252	1/21	108900	13500	Spec Buttons				135000		240900	135000	108900	
70452	1/23	145500	18000	Spec Buttons				180000		325500	180000	145500 (Lime Escape)	
70653	1/23	120038	14550	Spec Buttons				145500		265538	145500	120038	
71155	1/24	121078	14670	Spec Buttons				146700		267778	146700	121078	
71150	1/25	109973	13590	Lime Escape				135900		245873	135900	109973	
71775	2/1	111368	13770	Lime Escape				137700		249068	137700	111368	
72133	2/3	366529	44670	Spec Buttons				446700		815598	446700	368898 (Lime Escape)	
73448	2/3	120665	14460	Lime Escape				144600		265265	144600	120665	
74510	2/14	123355	14940	Spec Buttons				149400		272755	149400	123355	
75079	2/21	111368	13770	Lime Escape				137700	12760.00	249068	137700	111368	
75504	2/13	111368	13770	Lime Escape				137700		249068	137700	111368	
76054	2/18	115320	14880	Lime Escape				148800		264120	148800	115320	
77130	2/14	100620	77400	Victoria Escape				77400		178020	77400	100620	
77249	2/15	117513	14550	Spec Buttons				145500		271013	145500	122513 (Lime Escape)	
77 V	2/15	114078	13830	Spec Buttons				138300		252946	138600	114346	
77413	2/15	201660	24850	Pearl Escape				248500		301850	101350	201600	
77523	2/16	283500	35000	Cookie Box				350000		575260	226650	355610 (Lime Escape)	
77602	2/17	283500	35000	Cookie Box				350000		633516	168300	339916	
78603	2/1	131626	16200	Spec Buttons				162000		299250	162000	133650	
78	2/	218520	27000	Cookie Box				270000	13685.00	401600	135000	266800	
79	2/	120393	14850	Lime Escape				148500		239493	134700	104393	
79	2/	112500	13500	Spec Buttons				135000		168500	56500	112000	11th Barrow Eatsum
79	2/	123503	15246	Lime Escape				152460		271003	147900	123503	
80	2/	280137	34566	Lime Escape				345660		496134	216000	280134	
80	2/	273857	33810	Cookie Box				338100		507007	234150	272857	
A 80	2/	112000	10000	Victoria Escape				100000		168500	56500	112000	5th Barrow Eatsum
79	2/20	360192	9605	Spec Buttons				96050		529192	180900	360192	
80	2/21	154601	19080	Lime Escape				190800		320101	165200	154601	
A 79	2/21	118272	2 65	Landmark Escape				26500		177672	59400	118272	
81	2/21	97664	12060	Landmark Escape				120600	18471.00	148710	49050	97664	
81	2/21	286730	35400	Victoria Escape				354000		430730	144000	286730	
81	2/23	249686	30810	Landmark Escape				308100		457986	207600	249686	
81	2/23	314043	38760	Victoria Escape				387600		584043	270000	314043	
80	2/9	68063	8550	Lime Escape				85500		150563	85500	68063	
80	2/	171673	21150	Spec Buttons				211500		388578	216900	171673	
81	2/	113228	13980	Lime Escape				139800		253328	140100	113228	
81	2/									not Recorded			
81	2/3	106920	13200	Lime Escape				132000		238920	132000	106920	Eatsum
55	2/	181710	22440	Victoria Escape				224400		407110	225750	181710	
A 55	2/	136755	16830	Lime Escape				168300		305055	168300	136755	
79	2/	1055205	13040	Lime Escape				130400		235605	130400	105205	
	(Summary)	1											



5619

3094

13100

31045

Transactions between Waterman and Dope Lobster (Cal. Coast, Eastern)
1946

Index as recorded on Waterman Records

Invoice No.	Date	Invoice amount	Net Weight	Description
C 13014	1/10	1180176	14587	Clear Cut Hunts
13164	1/16	1478763	18263	
13268	1/19	1058190	12600	Mix Co. Cardinal - 4 no Spec Dept
14205	2/1	583614	10890	Clear Cut Hunts
14305	2/5	115340	14180	Clear Dept
14858	2/14	155354	31794	Clear Cut Hunts
15017	2/20	164693	19690	Spec Dept
15086	2/15	349330	5165	Clear Cut Hunts
15114	2/8	174143	21490	Clear Dept
15184	2/13	455813	59370	Cardinal Dept
15096	2/17	167750	21000	Clear Dept
15090	2/17	450156	10-8	Clear Cut Hunts
A 15030	2/16	60435	8490	Cardinal Dept
15061	2/10	193350	21000	Spec. Dept
15038	2/15	24960	13880	Clear Cut Hunts
A 15080	2/15	319865	39660	Clear Dept
15190	2/20	60000	13070	Cardinal Dept
15079	2/20	467750	60790	Clear Cut Hunts
A 1506	3/1	80000	10000	Cardinal
	3/1	5760	14976	Clear Cut Hunts
	3/6		10000	Cardinal Dept
	3/6	63000	13000	
	3/6	30000	30000	Celeste Fillet
	3/6	24000	30000	Celeste Fillet
	3/20	26760	24000	Celeste Fillet
	3/28	1000	1000	Celeste Fillet
	3/3	26990	3000	Cal Fillet
	3/10	24000	24000	Cal Fillet
	3/8	24000	24000	Cal Fillet
	3/15	24000	24000	Cal Fillet
	3			Cal Fillet
				Cal Fillet
				Cal Fillet
	3/20			Cardinal
	3/27	24000	24000	Cardinal Dept
A 1960	3/			Cardinal
4 1500		1000	24000	Cardinal
1500		807760	24000	Cardinal
1500	3/5	24000	10000	Cardinal Dept
1500	3/15	12000	5000	Cardinal Dept
1500			5000	Cardinal Dept
1500	3/20	16670	2000	Cardinal
1500	3/20	24000	10000	Cardinal Dept
1500	10/21	24000	10000	Cardinal Dept
1500	10/21	24000	10000	Cardinal Dept
1500	11/5	63216	1700	Cardinal
1500	10/21	24000	10000	Cardinal Dept
1500	10/21	24000	10000	Cardinal Dept
1500	11/6	196716	24000	Cardinal
1960	11/5	665318	13570	
1965	11/21	275943	13570	
	(illegible)	2162607		

Waterman Corporation 2 Commercial Boulevard Fort Lauderdale	Memo	Invoice	Net Weight	Amount
16		368805		36805
15		445395		44539
13		463800		46380
12		132000		13200
10		139970		13997
10		145200	14965	14520
		198900		19890
		122475		12247
		226700		22670
5½		139100		13910
		27700	8337	2770
		210000		21000
13½		84780		8478
		270000		27000
		210000		21000
		76977		7697
10		39600		3960
10		139500		13950
10		23700		2370
8½		402300	11781	40210
		205200		20520
13½		33750		3375
10		30000		3000
10		207000		20700
10		28600	14711	2860
10		191700		19170
10		30810		3081
10		22320		2232
10		28230		2823
10		210000	14753	21000
		34700		3470
		13650		1365
		10000		1000
13½		73408	11076	7340
		81157	11½	81157
		74834	11½	74834
		41880	11½	41880
10		10000		1000
		5100		510
		93780		9378
		10000		1000
		5000		500
		31950		3195
		5100		510
		98700	11½	9870
		16600		1660
		18700		1870
		331490	13187	33149

Unreallocated from Cuban fish financial diff $48,614.20
5629

[redacted] [redacted] Co. Corp., Elmsun

[redacted] Abstract Records

Invoice No.	Date	Invoice amount	Net Weight	Description
Forward				
197715	11/16	1189183	10680	Spun Rayon
197900	11/20	317500	2975	Spun Rayon
A-197137	11/16	33603	1340	Spun Rayon
197841	9/16	16000.00	5000.	Spun Rayon Blend
170782	9/11	406947	2500	Lisle Blend
187191	10/19	1174986	18791	Cotton Dyeing
191503	10/11	3077698		Cotton Dyeing
		7316061		
	Less	2631264.07		
	TOTAL	3351825.68		

Material Quotation & Surrender Rate Adjustment	Memo (Monthly) No Pieces	Insurance
Total		
" $ 1368.00	$ 1368.00	
" 1343.00	1343.00	
" 1341.00	1341.00	
" —	—	
44% 3700.00	3700.00	Unverified - do Rubber record for comparison
" —	—	
" — 7732.00	—	
	7732.00	
Forward	1351918.64	
TOTAL (Used in Insurance Recap)	1359298.64	

SHIPMENTS NOT BILLED:-

8/20/46	335 Cones	Comet Yarn @	$ 7.70 Cone	2441.00
7/15/46	1646	Cardinal	8.96	14751.00
6/8/46	70	"	8.96	627.20
5/14/46	1989	"	8.96	17821.44
3/6/46	600	Citrus Drop	3.75	2250.00
"	400	Spun Drop	2.25	900.00
3/9/46	456	Citrus Drop	3.75	1710.00
"	571	Spun Drop	2.25	1284.75
"	7	Spun Bottom	2.55	17.85
3/5/46	1150	Cardinal	7.70	9000.00
3/4/46	1000	Spun Bottom	2.55	2550.00
8/9/46	1720	Cardinal	7.70	12398.00 65736.44

TOTAL (Used in Insurance Recap) 65736.44

APPENDIX E.

Excerpt from Cross-Examination of H. Stanley Graflund on the Remanded Hearing.

(App. 1198-1204.)

Q. All right. Now on the same afternoon, August 28, 1956, Volume 21 page 41, were the following questions asked and did you make the following answers—

Those answers I read you you made, didn't you? You made all those answers I have just read?

A. That is correct.

Q. Now, please listen to these:

"Q. Did you have any conversation with Mr. Busby on your trip back—"

Referring to this time you had been East in January of 1948.

"A. I did.

"Q. What was the substance of that conversation and when was it that you came back?

"A. We came back the—I believe on Sunday, on the Century, bringing us into Chicago on Monday morning, as I recall.

"Q. What month was that?

"A. The month of January, 1948.

"Q. All right, sir.

"A. As I recall, it happened in the club car. I related to Mr. Busby the fact that Shotwell was engaged in dealings with Mr. Lubben and receiving cash which was not reflected on the books. Mr. Busby gave a long whistle and swore, I believe, and said it could be serious, or words to that effect.

"Q. Did you go into detail with him as to—

"A. I told him how Lubben had come into the office and had from time to time left money which had been kept in the office.

"Q. Did you tell about the box?

"A. About the cash box? I could have.

"Q. How it was handled?

"A. Whether we went into the great detail, I don't know. The substance was the dealings with Lubben on money, that money came in which was not recorded and used for the purpose of corn."

I assume you actually said "purchase", and it is transposed here into "purpose."

"A. I don't recall I discussed anything of the City National Bank box at that time, or necessarily the box, this separate box, just that it was kept at the office.

"Q. After you reached Chicago, did you have occasion to discuss that any further with Mr. Busby?

"A. I don't believe so.

"Q. Did you have occasion to discuss it with anyone else, Mr. Huebner or Mr. Sullivan?

"A. I do not think I did, Mr. Russo.

"Q. Was there any report made to Cain by Busby of your conversation?

"A. If there was I was not apprised of it.

"Q. Did you learn some other time from anyone that he had discussed it with Mr. Cain or Mr. Huebner or Mr. Sullivan?

"A. I believe Mr. Busby told me at a later date he discussed the matter with Mr. Cain.

"Q. How much of a later date was that?

"A. I would say about the time in late February, about that time, late February.

"Q. Late February.

"A. About the time the company was buying the Habercorn property."

Were those questions asked and did you make those answers under oath?

A. I did.

Q. And in that testimony you not only say you told Busby on the Century in a club car, and that he whistled, that he swore, that he said it could be serious, and entirely apart from that a month or so later, in February, he told you that he had taken the matter up with Cain; isn't that correct? You are relating in there not one conversation but two, isn't that correct?

A. That is correct.

Q. Now, were these questions asked and did you make these answers under oath, page 52, on this same day, August 28, 1956:

"Q. When you told Mr. Busby in the club car on the way back to Chicago about these over-ceiling payments, what was his demeanor? What was it?

"A. Well, Mr. Busby was a little bit poker faced. It is hard to tell. He gave a low whistle and swore.

"Q. Did he appear shocked?

"A. Well, if he appeared shocked, it was not too great. I mean, he did not fall out of the chair.

"Q. In other words, it is fair to say it was not even evident?

"A. He was impasse."

I assume—it appears in here as "impasse," i-m-p-a-s-s-e, but I assume that what you actually said, and there was an error, was that he was impassive, i-m-p-a-s-s-i-v-e.

Were those questions asked and did you make those answers under oath?

A. I did.

By Mr. Christensen: Page 56.

By Mr. Christensen:

Q. On the same day, before the same jury, under oath, in what you knew was a solemn matter, were these questions asked and did you make these answers:

"Mr. Russo: On the trip back with Mr. Busby from Mr. Lubben's farm, do you recall whether or not at that time you discussed with Mr. Busby the fact of over-ceiling, not over-ceiling, but unbilled shipments?

"A. I believe they could be covered in general discussion.

"Q. Do you have any recollection of covering them in that discussion.

"A. I believe they were. I think so, because that was one of the uppermost subjects in my mind.

"Q. So, you did discuss the unbilled shipments and disclosed them for the first time to Mr. Busby on that trip from Lubben's farm back to Chicago?

"A. Yes.

"Q. When you told him about it, about the unbilled shipments, what was his reaction at that time, if you have any memory of it?

"A. Well, as I say, Mr. Busby was not—he did not have a very expressive face—more or less taciturn or impassive. He just sat there and sipped his martini."

Were those questions asked and did you give those answers under oath?

A. I did.

Q. Two days later, on August 30, 1956, Volume 23, page 72—71, I beg your pardon:

"Q. Mr. Graflund, you testified previously about a trip back to New York in January of 1948 and Mr. Busby accompanied you on that trip?

"A. That is correct.

"Q. On the way back you told him about moneys received by Shotwell; that money, at least to your knowledge, they received?

"A. That is correct.

"Q. Did he give a little whistle, or, in your opinion, was he really surprised at the information you were giving him?

"A. Well, he didn't fall off the chair, I will say that."

Were those questions asked and did you make those answers under oath?

A. I did.

Q. On those several occasions in 1956?

A. Yes, sir.

Q. Mr. Witness, how vivid, how clear that testimony is. What a clear picture you had when you gave it in the club car, not any car—you saw Busby sitting there, sipping a martini, he swore, he whistled. He said you might be in serious trouble.

Why is it that you had such a clear and vivid picture of surrounding circumstances as to that and you couldn't tell me yesterday any of the surrounding circumstances of when you now say it took place, in June 1948, after Sam Krane had been in there?

A. Did you want me to answer that, sir?

Q. Yes.

A. Well, No. 1, the answers that I gave at that time were to the best of my recollection, and my honest answers. Subsequently, upon review in my own mind, I recalled that it was Mr. Busby who had told me of the conversation on the train and I had accepted that as fact.

Mr. Busby and I had been drinking and I wasn't sure what had been said and I repeated what Mr. Busby told me had taken place on the train. Whenever I was asked,

I said that the conversation took place on the train but I had no distinct knowledge of it. Now, that is the reason.

Until I have recalled this visit to Mr. Busby's home, it hit me then, and that is the reason why I changed my testimony at the following grand jury, because, up to then, Mr. Christensen, I had no way or no recall of that particular meeting and when I met—when I recalled that incident, I then changed my testimony, but only then.

Q. I see. I see. And is your story now that you gave all this testimony under oath as your direct vivid recollection, that you knew might result in an indictment to citizens, simply because Busby had told you something?

A. I believed him.

Q. That is why you did it, simply because Busby told you that?

A. That is correct. I believed him.

Q. That is your explanation?

A. That is correct.

Q. All right. Now, did Busby tell you that he sat there with a taciturn face?

A. No, sir. I remember Busby's face.

Q. Just a minute.

A. All right, sir.

Q. Did Busby tell you that when he heard this he was impassive?

A. No, sir.

Q. Did Busby tell you when he heard this he just sat there and sipped that martini?

A. No, sir.

Q. But that is what you swore happened at a time when you knew you might be getting an indictment against citizens, isn't it?

A. Yes, sir.

APPENDIX F.

Excerpts from Statements of the Disclosure Policy.

1. "Taxpayers who have failed to declare their full income and pay the tax due 'may escape criminal prosecution through voluntary disclosure of the deficiency only in cases where such voluntary disclosure is made before investigation is started'." (Statement of Secretary of the Treasury Morgenthau, May 28, 1945, R. 19.)

2. "* * * the man who makes a disclosure before an investigation is under way protects himself and his family from the stigma of a felony conviction. *And there is nothing complicated about going to a collector or other revenue officer and simply saying, 'There is something wrong with my return and I want to straighten it out'.*" (Secretary of Treasury Vinson, Aug. 21, 1945, R. 19.)

3. "Mr. Nunan again stressed the Bureau policy of refraining from instituting criminal proceedings against taxpayers who come forward voluntarily and pay up delinquencies plus interest and civil penalties before the Bureau has begun investigating their cases." (Press Release of Treasury Department, October 5, 1945, R. 3132.)

4. "And what is a voluntary disclosure? A voluntary disclosure occurs when a taxpayer of his own free will and accord, and before any investigation is initiated, discloses fraud upon the Government. * * * *The simple statement that 'I have filed false tax returns and I want to make the Government whole' would constitute a complete disclosure.*" (Italics added.) (Address by J. P. Wenchel, Chief Counsel of the Bureau, publicly released by Treasury, May 14, 1947, R. 3134, 3136.)

5. "One of the important elements in settling cases, with civil penalties and without prosecution, has been the Treasury's policy of not prosecuting persons who make a voluntary disclosure of their fraud before the Treasury begins an investigation of their cases. This means that, in order *to assure himself against criminal prosecution*, a repentant taxpayer must disclose his fraud to an official of the Bureau of Internal Revenue before the case has been assigned for examination and before an investigating officer of the Bureau has requested advice from appropriate officers of the Bureau regarding the case." (Italics added.) (Press Release by Secretary of the Treasury Snyder, May 25, 1947, R. 3140.)

APPENDIX G.

Composition of the Grand and Petit Juries and Source from Which Jurors Selected.

1. GRAND JURY:

(a) *Selections Made by Roy H. Johnson.*

May Bourne ..... recommended by former petit juror (Johnson Affidavit)

Mathew Classen ..... recommended by former grand juror (Johnson Affidavit)

Mary Jane Henning ..... recommended by former grand juror (Johnson Affidavit)

Robert J. McWalter ..... recommended by former grand juror (Johnson Affidavit)

Louis W. Northway ..... recommended by former grand juror (Johnson Affidavit)

Euphemia Parker ..... recommended by former grand juror (Johnson Affidavit)

Marion O. Rose ..... recommended by former grand juror (Johnson Affidavit)

John Oscar Karlson ..... volunteer (Johnson Affidavit)

Clarence Kruse ..... volunteer (Johnson Affidavit)

Lucille McDermott ..... perhaps a volunteer (Johnson Affidavit)

(b) *Selections Made by Richard Jongsma.*

Hazel S. Underhill ..... volunteer (Johnson Supp. Aff.)

Wm. K. Mahn ..... volunteer (Johnson Supp. Aff.)

John J. Jachera ..... volunteer (Johnson Supp. Aff.)

Emma A. Schlieckert ..... volunteer (App. 318, Cain Ex. 1B and 1C)

Roy L. Pierce.....telephone book (App. 331)
Fred Albly.....telephone book (App. 331)
Alexander C. Rice.....telephone book (App. 321)
James C. Delaney.....volunteer (App. 321-2)
Mae W. Peterson.....volunteer (App. 323-4)
Grace M. Lundholm.....volunteer (App. 325-6)
Jesse Devers.....telephone book (App. 326)
John Van Antwerp.....telephone book (App. 326)
Gust Uddman.....telephone book (App. 326)

2. Petit Jury.

(a) *Selections Made by Roy H. Johnson.*

Francis R. Schubert...recommended by former petit juror (Johnson Supp. Aff.)
Margaret M. Capinegro.recommended by former petit juror (Johnson Supp. Aff.)
Jean F. Lawler.....Illinois Opera Guild List (Johnson Supp. Aff.)
Ruth L. Schiller.....League of Women's Voters List (Johnson Supp. Aff.)
Harry Marshak.....recommended by another individual (Johnson Aff.)
Leroy J. Ryan.....recommended by former grand juror (Johnson Aff.)
Stanley Grzwacz.....recommended by former grand juror (Johnson Aff.)
Rose Blondin (alternate)..League of Women's Voters List (Johnson Aff.)

(b) *Selections Made by Richard Jongsma.*

Ethel A. Gassen.....volunteer (App. 329)
Arthur Amodeo.....telephone book (App. 335)
Anthony Massero.....telephone book (App. 336)
Helen Sajewski.....telephone book (App. 337)
John E. Jasch.....telephone book (App. 336)
Wm. A. Schmidt (alternate)....telephone book (App. 334)

APPENDIX H.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

Constitution of the United States:

Amendment IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces; or in the Militia, when in actual service in time of War or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

28 U. S. C. (1952 Edition).

"§ 1861. *Qualifications.*

Any citizen of the United States who has attained the age of 21 years and resides within the judicial district, is competent to serve as a grand or petit juror unless: * * *

(4) He is incompetent to serve as a grand or petit juror by the law of the State in which the district court is held. (June 25, 1948, ch. 646, § 1, 62 Stat. 951.)"

• • • • •

"§ 1864. *Manner of drawing; jury commissioners and their compensation.*

The names of grand and petit jurors shall be publicly drawn from a box containing the names of not less than three hundred qualified persons at the time of each drawing.

The jury box shall from time to time be refilled by the clerk of court, or his deputy, and a jury commissioner, appointed by the court.

• • • • •

The jury commissioner and the clerk, or his deputy, shall alternately place one name in the jury box without reference to party affiliations, until the box shall contain at least 300 names or such larger number as the court determines.

This section shall not apply to the District of Columbia. (June 25, 1948, ch. 646, § 1, 62 Stat. 952.)"

Ill. Rev. Stats. 1951, Ch. 78:

"§ 13. When by reason of challenge in the selection of a jury for the trial of any cause, or by reason of the sudden sickness or absence of any juror for any cause, the regular panel is exhausted, the court may direct the sheriff to summon a sufficient number of persons having the qualifications of jurors to fill the panel for the pending trial, but upon objection by either party to the cause to the sheriff summoning a sufficient number of persons to fill the panel, the court shall appoint a special bailiff to summon such person: Provided, the same person shall not be appointed special bailiff more than once in sixty days. Any person who seeks the position of a juror, or who asks any attorney or other officer of the court, or other person to secure his selection as a juryman, shall be deemed guilty of a contempt of court, and be fined not exceeding twenty dollars ($20), and shall thereby be disqualified from

serving as a juror for sixty days thereafter, and such fact shall be sufficient ground for challenge. Any attorney or party to a suit pending for trial who shall request or solicit the placing of any person upon a jury, shall be deemed guilty of a contempt of the court and be fined not exceeding one hundred dollars ($100.00), and the person so sought to be put upon the jury shall be disqualified to serve as a juror for sixty days. [As amended by act approved June 21, 1933. L. 1933, p. 684. In force Jan. 1, 1934.]"

Office Supreme Court, U.S.
FILED
JUL 2 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

No. 16

THE SHOTWELL MANUFACTURING COMPANY (RENAMED HOMAN MFG. CO., INC.), A CORPORATION, BYRON A. CAIN AND HAROLD E. SULLIVAN,
Petitioners,

vs.

UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR PETITIONERS.

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THE REVELATION TO BUSBY AND HIS ADVICE TO DISCLOSE.[8]

In response to Lubben's request for a further loan Cain, in January 1948, sent Leon Busby, Shotwell's outside auditor (App. 1024), and H. Stanley Graflund, Shotwell's comptroller, east to ascertain Lubben's financial position. Up to that time outsider Busby had known nothing about Shotwell's over-ceiling transactions (R. 169, G. Ex. 213).

It was from what Busby learned on this January 1948 trip (R. 170, 211-2, 1827, 1829) from Lubben's books and from revelations by Graflund (App. 1126-1130, 1198-1204) as to the over-ceiling transactions, that the disclosure stemmed. (It was charged to this court in 1957 that Graflund had *not* revealed the over-ceiling facts to Busby during that trip; that Busby knew nothing of them until approximately July 1, 1948, and hence would have been unable to advise a disclosure prior to the latter date.)

(Judge Nordbye now has found that Graflund *did* make the revelation to Busby on the January 1948 New York trip just as Busby originally testified (App. 1760).)

Busby immediately (a) reported to petitioners that Lubben was in hopeless financial condition, and (b), upon receiving confirming admissions from Cain and Sullivan of

8. The pivotal charge made to this Court in the 1956-1957 proceedings was that the disclosure simply could not have taken place in early 1948 as claimed by petitioners because petitioners' outside auditor, Busby, who advised that it be made, had not been informed of the transactions in early January 1948, and in fact knew nothing about them until approximately July 1, 1948, and, hence, could not have made the disclosure to Revenue Agent Sauber prior to the latter date. That charge was found, on the new hearing which this Court ordered, to be erroneous (App. 1760).

We respectfully direct the Court's attention through the succeeding pages of this brief to the fact that many of the record references are to the old original R. record while others are to the new hearing App. record. We suggest that this indicates how well the new App. record supplements and confirms the old R. record which was so wrongfully charged to have been perjurious.

the over-ceiling transactions (R. 204, 1826), informed petitioners that Shotwell had an income tax problem because petitioners were wrong in their assumption that over-ceiling disbursements for raw materials could be used as an offset or deduction against over-ceiling receipts (R. 170-172, 206, 207, 1828-1831). He pointed out that under Treasury regulations then in force no deduction could be made for over-ceiling premiums (See 355 U.S. at 238, n. 12). Busby advised that a voluntary disclosure be made (R. 172, 1831, 2608-2609).

THE DISCLOSURE.

Busby was directed to find out precisely what the disclosure procedure would be (R. 174, 226-8, 248) for although he was familiar with the Treasury's published statements on the subject this was the first disclosure he had any experience with (R. 201). Busby testified he went to the Collector's office and discussed the matter with Chief Deputy Collector Ernest Sauber during the week following January 11, 1948 (R. 173-4, 213, 2832-2833), and Cain says that Busby reported back to him not later than the end of January (R. 229-30, 250). Chief Deputy Collector Sauber recalled the first visit as approximately March 15 (R. 282).[9]

The first visit was exploratory, for although Busby described the nature of the black market operations, he did not reveal the name of his client. Sauber told him that "if

9. Throughout the original 1952 suppresion hearing there was a running difference of four to six weeks in the recollections of Cain and Busby on the one hand and Sauber on the other as to when various disclosure events had taken place. On the Government's then theory that Dec. 16, 1947 marked the "timeliness" date (R. 445), this difference was immaterial because any disclosure after December 16, 1947 would have been unavailing. Had *precise* dates in the spring of 1948 been material in 1952 it is to be assumed that counsel on both sides would have done more to clarify the time steps.

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BRIEF FOR PETITIONERS.

OPINIONS BELOW.

The case is here for the second time. Original 1955 opinion of the Court of Appeals for the Seventh Circuit, which reversed convictions of petitioners for asserted income tax evasion because evidence was used against them which had been obtained from them by promising them immunity from prosecution, is reported at 225 F. 2d 394.

This Court's 1957 opinion, remanding for limited proceedings to determine whether the Court of Appeals order for a new trial was based upon a perjured record upon the suppression hearing is reported at 355 U. S. 233.

The 1959 opinion of Judge Nordbye upon the remanded proceedings, finding no perjury in the original suppression testimony but nevertheless denying a new trial and resentencing, is not reported but appears at App. 1754, *et seq.*[1]

The 1961 opinion of the Court of Appeals for the Seventh Circuit affirming the new judgments is reported at 287 F. 2d 667, and appears at S. 291 ff.

Separate from the merits of the case are questions as to whether proper jury selection procedures were followed in the selection of persons from whom were formed the indicting grand jury and the petit jury before which the case was tried. The unreported opinion of Judge Nordbye on that issue appears at App. 429, *et seq.*

JURISDICTION.

The judgments of the Court of Appeals were entered February 8, 1961. Timely petition for certiorari was allowed by this Court December 18, 1961. Jurisdiction is invoked under 28 U. S. C. Section 1254(1).

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1. The printed record before the Court is in several parts:

a. The record of the original suppression of evidence hearing (1952) and jury trial (1953) is in seven terra cotta colored volumes. References to it will be made as "R. ....." Accompanying that record are two buff covered volumes entitled Exhibit Volumes 1 and 2. References to these will be made as "Ex. .... Vol. ...."

b. The record of the remanded hearing (1958-1959) is in three cream colored volumes entitled "Appendix to Brief," etc. References to it will be made as "App. ....."

c. Part of the evidence as to the jury selection procedures is in a cream colored volume entitled "*Sullivan* v. *U. S. District Court*," "Appendix in Support of Petition for Mandamus," which was received as part of the evidence on the remanded hearing. Included in that volume is the record of the Court of Appeals on the last appeal. References to this volume will be made as "S. ....."

QUESTIONS PRESENTED.

1.

Whether the admission in evidence of documents and information furnished by petitioners in reliance on the Government's promise of immunity from prosecution violated petitioners' rights under the Fourth and Fifth Amendments and the common law rule excluding incriminating material induced by such promises.

2.

Whether criminal justice and the processes of this Court were abused and a fraud worked on the Court by inducing it to delay action for nearly a year and ultimately to remand the case by the device of concealing from the Court that the witnesses whose affidavits were presented to it (and one from whom testimony was promised) had repeatedly sworn to the contrary of what was represented to this Court before, or while, the motion to remand was pending and changed their testimony only after being subjected to repeated interrogations, "refresher courses" and other sophisticated forms of pressure by Government agents.

3.

Whether it was either a denial of due process or a violation of civilized standards for administration of justice for the District Court to re-enter judgments of conviction after the Court had found on the reopened hearing that the principal witness for the Government on the original jury trial (Lubben) had given seriously false testimony to the jury on a vital issue.

4.

Whether petitioners had to show they were "actually prejudiced" by illegal jury selection procedures utilized in selection of the arrays of both the indicting grand, and the petit juries by which (a) jurors were selected from the private list specifically condemned in *Glasser* v. *U. S.*, 315 U. S. 60, as well as other private lists, and volunteers were accepted contrary to the Illinois statute, and (b) the Jury Commissioner delegated his non-delegable duty of selection of prospective jurors to an employee of a private corporation of which he was president.

5.

Whether the jury could be instructed it might consider evidence against Sullivan which had been ruled inadmissible as to him; and instructed that the disclosure was defective.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

Constitution of the United States, Amendments 4 and 5.
26 U. S. C. (1952 ed.) Sec. 1371 (Internal Revenue).
28 U. S. C. (1952 ed.) Secs. 1861, 1864 (Jurors).
Illinois Revised Statutes 1951, Chap. 78, Sec. 13 (Jurors).

(Texts are shown in Appendix A hereto.)

STATEMENT.[2]

When this case was first here the Court found (355 U. S. at 234) it presented "an unusual question involving the integrity of a criminal trial in the federal courts." This question arose from a claim that testimony by defend-

2. Because the history of the case is complex we supplement our "Statement" with a "Chronology of Litigation and the Re-Investigation" which appears as Appendix C hereto.

ant Cain, defense witness Busby, and Government witness Sauber, given in the District Court in 1952 on petitioners' motion to suppress evidence, had been a gross fraud in that it purported to describe a "voluntary disclosure" of income tax irregularities that, so it was asserted, had not taken place at all. This Court, in 1957, remanded the case to the District Court to hold a hearing to ascertain whether "the [1955] decision of the Court of Appeals [directing suppression of evidence] was based upon a perjurious record."

The new hearing, held in late 1958, resulted in an opinion by Judge Nordbye in 1959 which, although using harsh language against petitioners, does not find that a syllable of perjury had been given in 1952 as to why, when or how the disclosure was made; Judge Nordbye finds that the disclosure, whether technically perfect or imperfect, was made as originally had been testified; it was not a perjurious invention.

The "new" evidence showed, as admitted by the Brief for the United States in Opposition to the Petition for Certiorari leading to the present proceedings, that a "public offer [of immunity] was made to all taxpayers [by the Treasury]; that petitioners, who had not even been accused, voluntarily came forward and admitted unreported receipts" and did so because they "wished to avail themselves of the offer of immunity" (Br. in Opp., 13).

The District Court in 1959 found that the voluntary disclosure had been made, it nevertheless was, in his opinion "fraudulent" because it did not square with his beliefs as to the merits of the tax case.

The District Court re-sentenced petitioners although the evidence showed, and the Court found, that the claim of a voluntary disclosure was true and that material obtained from petitioners by promising them immunity was used to

convict them. The new hearing also showed (a) that the juries which indicted and convicted petitioners were illegally composed; (b) that the 1952 convictions had been based upon perjured evidence by the Government's then star witnesses, which the jury had accepted as true; (c) that this Court's 1957 order of remandment had been obtained by withholding from this Court highly important exculpatory evidence that was to the precise contrary of the assertions the prosecutors made to it in 1956 and 1957.

Decision of the issues requires, in our judgment, a complete statement of the case so that the various unusual events may be seen in proper focus.

The facts set out below are uncontradicted save where we indicate instances of dispute.

THE INDICTMENT.

In 1952 petitioners and Frank J. Huebner were indicted in the United States District Court for the Northern District of Illinois for (allegedly) wilfully attempting to evade a portion of the corporate income taxes of The Shotwell Manufacturing Company for 1945 and 1946. The substance of the indictment (R. 5-6), as explained by a bill of particulars, was that the Shotwell Company had received $500,000[3] of unreported receipts on sales of its product, candy, to one David L. Lubben, or companies he controlled, and that this resulted in a tax deficiency of $286,000 beyond the $827,000 that Shotwell had paid. Petitioner Cain was President of Shotwell during the relevant periods; petitioner Sullivan was Executive Vice President and General Counsel; Huebner was Vice President and Plant Manager.

Defendants filed a motion to dismiss (R. 10 ff.), which

3. Throughout this brief, unless otherwise indicated, we use round figures.

was the equivalent of a plea in bar, alleging that in January 1948 they had made a timely, voluntary disclosure of unreported income from Lubben pursuant to invitations by the Treasury promising immunity from prosecution to those who would make such disclosure prior to independent investigation being initiated by the taxing authorities.[4] This motion, in both original and amended form (R. 612) was denied by the District Court on the legal grounds that "uncompleted negotiations for compromise" cannot raise an estoppel (R. 98) and that any pardon or amnesty was beyond the authority of officials of the Internal Revenue Department (R. 617). The legal effect of these rulings was that, assuming a valid voluntary disclosure had been made, the immunity promised by the Treasury was not judicially enforceable. Had the government controverted the factual averments of this motion petitioners would have been entitled to a jury trial on the issue of whether they had made a good disclosure.[5] (Petitioners never have waived that right. It was called to the attention of the Court of Appeals on the first appeal and to the attention of this Court in the Conditional Cross-Petition for Certiorari in the initial proceedings here. See Condl. Cross-Pet. No. 471, O. T. 1955, p. 4, n. 3.)

THE MOTION TO SUPPRESS.

Petitioners next filed motions (R. 120 ff.) to suppress voluminous documentary evidence they had specially prepared for, and delivered to, treasury agents who investigated Shotwell in pursuance of the disclosure. An evi-

4. Official statements of the "voluntary disclosure policy" are collected in Appendix B hereto.

5. Rule 12(a) provides that a defense formerly raised before trial by plea shall be raised by motion. At common law a defendant was entitled to jury trial, before a separate jury, of any issue of fact raised on a plea in bar. *Short* v *United States*, 4 Cir., 91 F. 2d 614, 619; *Commonwealth* v. *Merrill*, 90 Mass. 545, 546, 547.

dentiary hearing on the motion to suppress, without a jury, was held in 1952 (R. 168-453). (It was as to this hearing that the prosecutors' subsequent charges of rampant perjury were leveled in this Court.)

The motion to suppress (R. 120 ff.) alleged that in January 1948, in reliance upon repeated announcements by the Secretary of the Treasury, the Commissioner of Internal Revenue, and other responsible Treasury officials, to the effect that persons whose income tax returns contained omissions or misstatements would be immune from criminal prosecution if they voluntarily came forward before investigation had been initiated by the Treasury and disclosed such errors, petitioners did come forward and made such disclosure in respect of the returns of the corporation for the years 1945 and 1946; that thereafter they turned over voluminous records and documents and assisted the tax agents in making an investigation pursuant to the disclosure; that this was all in reliance upon the promises of immunity.

The hearing upon this motion is best understood in relation to basic facts in the relationship between the Shotwell Company and Lubben:

BASIC RELATIONS BETWEEN SHOTWELL AND LUBBEN.

Shotwell was a candy manufacturer in Chicago; Lubben a candy broker in New York. Early in 1944 Lubben acquired a candy distributorship known as Eatsum Food Products and thereupon operated it as a sole proprietorship (R. 788). In June 1945 Lubben converted Eatsum into a partnership in which his principal partner was one Giglio, a black market operator of whom he was in mortal fear at time of trial herein in 1953 (R. 1061).[6] In March 1946

6. Giglio subsequently was held guilty of tax evasion. See *Lawn* v. *United States*, 355 U. S. 339, which determined his case. The "partnership" between Lubben, Giglio and others is described in that opinion p. 342, n. 3.

(R. 1962) Lubben withdrew from partnership with Giglio and did business through a corporation, General Confections, Inc.

Shotwell's situation was as follows: In the summer of 1945 an acute shortage of corn syrup, necessary to the manufacture of Shotwell's candy, developed because OPA ceilings on corn had become so unbalanced in relation to those on hogs that it was much more profitable for farmers to feed their corn than to sell it at ceiling prices to corn refiners. As a result the corn refiners informed Shotwell, and all other candy companies, that if they wished to obtain corn syrup, they would have to procure the raw corn necessary for its production (R. 222-225, App. 863-8, 1028, 1290, 2546-7).

Lubben had become a customer of Shotwell in the spring of 1944. He was not a substantial customer until 1945. (See D. Ex. 1, Supp. hrg., R. 3091 ff.) His first contact with any official of the Company was with Huebre , to whom he had been introduced as a person who could arrange so-called "trade deals" by which firms having surpluses of materials in short supply made them available to others in various types of exchanges of goods (R. 792-3, 2006-9, 2055, 2061, 2571, 2544-2545). Lubben asked whether he could have the Shotwell line as a broker in New York if he was able to get chocolate for Shotwell (R. 793-795, 2060).

It is the Government's contention that Lubben offered to, and did, pay black market premiums on all candy he bought from Shotwell. It is petitioners' contention there were no over-ceiling transactions with Lubben, at least so far as Cain and Sullivan were aware, until the fall of 1945. Whatever the true fact may be as to that, it is undisputed that because of the corn syrup shortage which had developed by June 1945, and which limited Shotwell's ability to produce candy, Shotwell was forced to drop many customers. Lubben was dropped from June 27, 1945 until

September 29, 1945 (D. Ex. 1, Supp. hrg., R. 3093, App. 782).[7] Petitioners contend that at about the latter date Lubben came to them and offered to pay unrecorded cash premiums above ceiling prices for candy, which unrecorded cash Shotwell could then use, without alerting Office of Price Administration inspectors (R. 774, Cf. App. 784-785), to pay unrecorded over-ceiling cash premiums on raw corn. The owners of the corn, having received the premium, then made the corn available at ceiling prices to refiners; they in turn made the resulting corn syrup (or other corn product) available to Shotwell at ceiling.

The corn market at these times was so disarranged that the Government itself was buying corn at over-ceiling prices (R. 2420, 2682, 2709, D. Exs. 89, 90 and rejected Ex. 74). By October 1945 cash corn had virtually disappeared from the market (R. 2372, 2376-7). OPA ceilings were removed from corn on June 30, 1946. The shortage of syrup immediately disappeared. It is petitioners' contention that all over-ceiling transactions then ceased. The Government contends they continued until nearly the end of 1946 although its own evidence is that the "corn box" through which the transactions were handled was closed on July 26 and 27, 1946 (App. 1227-8).

Although there is great dispute as to the amount of so-called "overages" or premiums that Lubben actually paid Shotwell (or any one connected with it), petitioners do not dispute that Lubben did, for approximately nine months, pay substantial premiums, and, although the Government does not agree that *all* that Shotwell received (except a

7. Petitioners' action of dropping Lubben as a customer is a fact, we contend, grossly inconsistent with the Government's contention that Lubben had theretofore been paying "overages" which somehow found their way into the pockets of the individual petitioners. If such a course of personal enrichment had been going on it seems highly unlikely that Lubben would have been selected as a customer to cut off.

small terminal balance) was paid out for corn, it concedes that Shotwell did pay out large amounts as cash premiums on corn. (At the 1958 hearing Huebner conceded that Shotwell paid premiums on at least 300 cars of corn at rates up to $1,000 a car. App. 862-3.)

Likewise, there is no dispute but that Shotwell had a so-called "corn box" for about 9 months (App. 1213) in which cash coming from Lubben was placed and removed on instructions from Huebner to pay premiums for purchases of corn. Huebner, who personally handled most of the transactions, now says that in the process some $45,000 of funds emanating from Lubben found its way into his personal pocket, some with, some without the knowledge of Cain and Sullivan. Cain and Sullivan swear that they personally never got any of this money (R. 262, 2638). In any event, at the time in question, 1945-1946, petitioners assumed that all cash emanating from Lubben was expended for corn (except a terminal balance of approximately $6,000 on hand when the corn shortage ended, which was carried into the Company's books of account and tax returns), and assumed that although there had been OPA violations which they wished to conceal, there was no income tax problem because the company had paid out what it took in (R. 205, 782, 1827-8, 2554, 2585).

In the middle of 1947 Lubben, who meantime had become a candy manufacturer himself, fell into financial trouble and asked Shotwell for a loan. In July 1947 petitioner Cain arranged for the Sterling Bank of New York to make a $75,000 loan to Lubben which Cain guaranteed (R. 2602). Lubben in turn gave Cain, as agent for Shotwell, a mortgage on his properties (R. 1023, 2552, 2604, 2658-61). Near the end of 1947 Lubben experienced additional troubles and wanted an additional $50,000 loan (R. 2552, 2641).

the disclosure is timely and the facts that I had related to him were correct, he saw no reason why the immunity policy of the Bureau should not be applied" (R. 174-5). Busby reported this to petitioners and was instructed to disclose Shotwell's name. Petitioners' purpose was to avoid criminal prosecution (R. 250). Within two or three days (R. 177) Busby went back to Sauber and disclosed Shotwell as the taxpayer. Sauber said he was a proper officer to whom a disclosure could be made (R. 200).

At this time, as on several other occasions, Busby (and later Cain) told Sauber that Shotwell had no figures and would have to reconstruct the account (R. 178, 202, 229, 231-3, 283, 284, 286, 2564, 2570, 2577, 2590). Sauber said that because petitioners had no records of these transactions they could not file an amended return and should gather "such information as we could from any memorandum or memory and summarize it;" that he would contact the office of the Agent in Charge and have an agent work with them for the purpose of getting together the facts on which an assessment could be made (R. 178). Sauber advised that rather than attempting to file an amended return it would be better to wait until an Agent came out and determined the amount on a basis that could be acceptable to the Department (R. 202). Busby made it clear that the taxpayer wished to make a disclosure and to make whatever corrections and payments of taxes were necessary (R. 202).

According to Busby, in late January or early February he brought petitioner Cain to Sauber's office and introduced him as the president of Shotwell. Cain told Sauber he understood he could make a disclosure without fear of prosecution (R. 181). The three had a lengthy discussion. Cain was worried about publicity. Sauber told him it was strictly a civil case and he had nothing to worry about as far as publicity was concerned (R. 285). It is Busby's tes-

timony that in January he asked Sauber to ascertain if any investigation of Shotwell had been initiated. (Sauber placed the dates of these meetings as approximately six weeks later.) It is undenied that in March Sauber reported he had checked with Group Chief Johnson and that no investigation had been commenced (R. 231, 257).

THE SUBSEQUENT PREPARATION AND SURRENDER OF DOCUMENTS LATER USED TO CONVICT PETITIONERS.

The work of assembling data as Sauber had requested, from which to reconstruct the Lubben transactions as aid to the Treasury in making a civil assessment commenced. In late January or early February, Huebner visited Lubben at a farm the latter had in New Jersey and asked to see such of his records as were available. Lubben showed Huebner papers which he said were partial records of Eatsum and General Confections pertaining to premiums supposedly paid to Shotwell (R. 867, *et seq.*). Some of these were delivered to Huebner (R. 1315) who took them to Chicago where Graflund went to work to see how they "jibed" with his information. He reported to Huebner they were "so far out" there was "no point in trying to compare this" (App. 1166).

In February 1948, Huebner who, according to the false representations made to this Court, supposedly knew nothing about the disclosure, told representatives of Close Candy Company of Chicago, which also had engaged in over-ceiling transactions with Lubben, that "a disclosure would have to be made" by Shotwell of its over-ceiling transactions; the Close representatives "begged" him not to because "it would upset the apple cart" on them and "a lot of other people" (App. 1168-1171).[10]

10. The Government evidence that Huebner, in February 1948, was warning Close Candy Company that Shotwell would have to make a disclosure was given by Government witness Graflund on

By the beginning of March petitioners realized Lubben was in a bitter dispute with his former partner, Giglio. They realized he had motives, with respect to the Government and Giglio, for claiming he had paid out as much money as he possibly could. They knew also that any reconstruction of the Lubben transactions which they prepared would be checked by Treasury agents with whatever Lubben's supposed books showed or what Lubben said had happened.

The individual petitioners are men of high standing (R. 2686-2703) who were ashamed they had become involved in a tax dispute and didn't want anybody to know about it (R. 2619). They wanted no dispute with Lubben. In March, Cain arrived at a policy decision which he promptly communicated to Sauber as follows:

> "• • • that the only thing that we could possibly do in dealing with a chap like this chap Lubben would be to take every invoice that we had sent to him and apply the maximum over ceiling price.
>
> "• • • I said there definitely had been trade deals with Mr. Lubben, but there was no way for us to separate them" • • • I told him this—this thing started slow • • •. Then it reached up like the corn market did to a peak. • • • I said we will use the peak price and when we come up with that figure, that would be the best of our recollection." (R. 232.)

As to over-ceiling expenditures, he said,

> "As to our expenditures I just can't tell you anything. I don't know."

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the new hearing. It is petitioners' contention that in fact Huebner by that time knew the disclosure already had been made and was being less than frank with the Close personnel. In any event, this item of proof demonstrates that Huebner then knew, contrary to his subsequent affidavit to this Court (Supp. to Mo. to Remand, Nos. 9 and 10, O. T. Term 1956, p. 8) that a disclosure either had been made or was in immediate contemplation.

11. Huebner in his first interview with Government agents in 1956 confirmed that there had been "trade deals" (App. 750).

Sauber said,

> "It wouldn't do any good if you did know because we wouldn't allow them anyway. We absolutely won't allow over the ceiling expenditures." (R. 232.)

Cain told Sauber that in view of the Government making no allowances for over-ceiling expenditures, Shotwell owed a lot of money but stood ready and able to pay it, but that wouldn't stop them if at some future time they tried to get their money back, or a portion of it, for these over-ceiling payments. Sauber replied:

> "That is perfectly all right. All we want to do is get the tax. That is my job. I am a collector and I want to get the tax." (R. 232.)

All of this is uncontradicted save that Sauber placed the latter conversation in April rather than March 1948 (D. Ex. 3, Supp. hrg., R. 3155, 286). In any event, Sauber said he would ask the Revenue Agents who had charge of such matters to commence an audit (R. 257, 286, 3155). Sauber then phoned Agent Johnson and asked him to do this (R. 286).

Cain's instructions to use the highest premium prices in preparing data to be submitted to the investigating agents, to disregard all "trade deals" and to consider that on every invoice Shotwell got additional cash, even if it did not, were adhered to when, some three or four months later, a reconstructed account or "summary" was prepared: Huebner on the 1958 hearing admitted that "the highest amounts were put into the account by orders of Byron Cain, who said to put everything in those figures possible that he [Lubben] could say he paid us money on. We put a lot of figures on there that Mr. Cain instructed us to do, put the highest amount we possibly could have gotten from Lubben" (App. 797-800; see also App. 967-8). Graflund agreed that Cain instructed, "I want everything

put down you possibly can" (App. 1063). Graflund testified that the compilers of the data (which is the subject of the Motion to Suppress) put everything in at the top price whether right or wrong, for the purpose of trying to have the summaries "tie into" and "jibe" with Lubben's supposed papers (App. 1245-7) (cf. Busby at R. 2817; 2835).

The effect of this system of agreeing with what were understood to be Lubben's claims was (1) any open controversy with Lubben's figures that might have resulted in a public hearing which would have disclosed that petitioners had, to a degree, been in the black market was avoided, (2) possible criminal prosecution was, so believed petitioners, avoided, but (3) since the compilations "admitted" receipt of considerably more than Lubben had actually paid, petitioners could not possibly account truly for disbursing that portion that had not been received.

Cain summarized the work of compiling data after the disclosure had been made as follows:

> "We started out to make a compilation. We were primarily interested in over ceiling payments to us, anything that could be charged to us. That is the only thing we were interested in.
>
> "So we started out to assemble that data and as things usually do, the agent didn't appear and he didn't appear, so it dragged.
>
> "The minute he appeared everybody went to work on it again.
>
> "Mr. Busby, I think, had a man working on it continuously from about, oh, January, February, right on through, but then we put the whole staff on it, Mr. Huebner, and the whole gang of us got to work, Mr. Sullivan, and we assembled what would give him something to go by and we told him that." (R. 233.)

Graflund, in 1953, in describing these events to the Government gave a report which agent Krane summarized as follows:

"April or May, 1948—preliminary discussion—Cain —Busby—general discussion—real work on figures did not start until after Krane came." (App. 1156-1157.)

Busby summarized the work as follows when he testified on the trial before the jury:

"The compilations on that sheet (G. Ex. 186, Ex. Vol. 117; also at R. 3087 and 3096 and in longhand, R. 3090) ran over a period of three or four, five, months, beginning in January, after I had made the disclosure."

By the Court: "January of what year?"

By the Witness: "January, 1948, down through June: Part of the time I didn't work on it. I was on vacation, but the work covered that span of time." (R. 2837; See also, R. 2585, 2590.)

As the spring of 1948 wore on no agent appeared to make the examination. Sauber admits that Cain telephoned him to get the work started because the company wanted to put a statement on its balance sheet and go ahead with plans to issue additional stock. Sauber told him to be patient (R. 287).

In June, 1948 petitioner Sullivan was confined to St. Joseph's Hospital in Chicago. Edmund B. Horgan, the Chief Office Deputy in the Chicago Internal Revenue Office and a friend of Sullivan's for some years was confined in the same hospital a room or two away. Both had the same doctor who informed each of the other's presence (App. 1566-69). On June 4, Sullivan, preparing to leave the hospital, visited Horgan and loaned the latter his portable radio (App. 1570). Sullivan complained to Horgan about the Bureau's delay in investigating and closing the case. Horgan offered to talk with Sauber on the telephone from the hospital and immediately did so, telling Sauber that Sullivan was inquiring as to the delay. Sauber replied that Horgan ought to know that "• • • the agent's office does

not do things in a minute. I have reported the case to the agent's office and in due time they will get around to it." (App. 1570.[12])

THE KRANE VISIT DURING PERIOD DATA WAS BEING ASSEMBLED.

On June 21, 1948 occurred the event around which basic Government contentions when the case was first here revolved: the visit of Agent Sam Krane of the Chicago Revenue Office to the Shotwell plant to pick up information for use of Revenue Agents in New York who were investigating Lubben.

It was contended to this Court in 1956-1957 that a disclosure after June 21, 1948 would have been "untimely" (Br. for U. S. No. 1, O. T. 1957 p. 33) and that the Government's "new" evidence would show that "*no* move was made by respondents [petitioners] to disclose the corporation's unreported black market receipts prior" to this visit (Id. p. 25, also this Court's opinion in 355 U. S., notes 13 and

12. No evidence as to the Sullivan-Horgan conversations which are confirmatory that the disclosure had been made considerably before June 4, 1948 was given at the 1952 hearing for the reason that on the Government's then theory of a December, 1946 "timeliness" date it then was immaterial.

In 1952 the Government took the position that a disclosure made at any time in 1948 was untimely because the "timeliness" date was December 16, 1947 (R. 445). That contention was subsequently abandoned.

When the case first came to this Court, and for a time in the 1958 hearings, it was contended (incorrectly) that the "timeliness" date was June 21, 1948. With the prosecutors advancing such a theory the Horgan-Sullivan conversation showing that the disclosure necessarily was earlier than June 4, 1948 (and had been made to Sauber) became material. Had it not been for Sullivan's incidental kindness of loaning the radio, the incident, with the important date which could be fixed through hospital records, might have been forgotten.

21[13]). The supplemental hearing disproved those sweeping assertions. The new finding is that, "The exact time that Busby made a visit to Sauber's office is difficult to pin point, and although the Government contends that it was not made until after the visit of Agent Krane to the Shotwell plant, my view from all the evidence is that it is fair to find that Busby did visit Sauber about Shotwell's taxes some time before Krane's visit" (App. 1760-61). (Agent Sam Krane, who performed the errand for New York officials, subsequently was assigned to *the Shotwell case* but on the June 21, 1948 visit he was not investigating Shotwell at all.)

At the time of the Krane visit of June 21, Cain, Sullivan and Huebner were in New York attending a candy convention; while there they sought, and obtained (R. 2557) in their effort to reconstruct the Lubben transactions, information from Lubben's former auditors, Sproull, Scholz & Company, as to Lubben's transactions (App. 657-8, 794-6, R. 2815, 2824). They also received information from one Tobias, former accountant for Lubben but then connected with the New York Revenue Office, that Lubben had doctored his books so as to charge various items against Shotwell that he had not actually paid it (App. 790-796). When Agent Krane made his call at the Shotwell plant, Graflund reported the visit by telephone to Cain in New York. Graflund at the 1958 hearing asserted that Cain criticized him for delivering any material to Krane (App. 1046).

13. The prosecutors' unsound contention when the case was first here was unstinted: "The new evidence indicates that the testimony which placed the date of the so-called disclosure in January or March 1948 was perjurious • • •. *In fact, the so-called disclosure took place in July 1948*. This was subsequent to the occasion (on June 21, 1948) when Special Agent Krane called at the corporation office • • •" (Id. p. 33). "The new evidence • • • affirmatively shows that it did not take place until this later [July] date" (Id. p. 33, n. 27).

PREPARATION OF THE SUMMARY.

Shortly after the return of Cain, Sullivan and Huebner from the New York candy convention Cain took personal charge of preparing the summary to be tendered to whatever Examination Agent appeared to examine Shotwell in pursuance of the disclosure. Cain assembled Shotwell people who knew about the transactions at the Belden Stratford Hotel, in which he was interested, so they could avoid distractions of regular duties and complete the task that had dragged for so long (App. 1179).

Every Shotwell-Lubben transaction was now listed on large accounting sheets. (Reproductions appear as D. Ex. 1, Supp. Hrg., R. 3091-95, and in revised form as D. Ex. 2, Supp. Hrg., R. 3097-3101; the latter is also G. Ex. 189-A to 189-E, Ex. Vol. 1, 122 ff. The clearest reproductions are those attached to our Pet. for Cert. 85-90.) Each sale (App. 749) was listed by date and invoice number. On the right-hand side, under the heading "Memo taken from Lubben Record", were shown the amounts as shown by "His record" and the amounts "He added" as supposed premium. Many of Lubben's alleged records were missing. In such cases estimates were made in order to have a reconstructed account that would jibe with what Lubben's "exaggerated" and untrue claims were understood to be (R. 2814, 2816, 2817, 2841[14]).

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14. It was clearly established by Government witnesses on the supplemental hearing that Lubben's so-called "records" had been altered to show as charges against Shotwell items that had been paid to different companies (App. 969); that he "lied on the stand" to the jury in 1953 (App. 809) when he testified in accordance with such doctored records. The District Court, contrary to his 1953 view that Lubben was sincere and truthful when before the jury, found as a fact after the 1958 supplemental hearing that it is "entirely probable" that Lubben "exaggerated" in 1953 as to the amounts of his payments (App. 1758). The precise amount of the "exaggeration" remains in dispute. We say a fair interpretation of the District Court's findings is that the "exaggeration" was at least $132,000; we believe the evidence shows it was much more. See p. ...., *infra*.

Although Graflund thought the true amount of "premiums" or "overages" involved was around 100 thousand dollars and Huebner thought it couldn't exceed between 150 and 160 thousand dollars, including trade deals (R. 2835), the figures compiled in the manner described totalled about 400 thousand dollars, at which figure all were amazed (R. 2564). Cain repeated his instruction, "I don't care how much money came in. I don't care. Just get the absolute ceiling this guy [Lubben] could possibly charge us with, get the absolute ceiling. He is a super-salesman and I don't want any traffic with him at all. Let's put the absolute ceiling in and then let the government assess us, even if it is three or four times as much as we owe" (R. 2564). (Note that Cain understood he was inviting a large assessment and had reserved the right of possibly trying "at some future time" to get some of his tax money back, and had been told by Sauber that that was perfectly all right. See p. ....., *ante*.)

Thus occurred the "dilemma" (R. 233) of "admitting", for purposes of avoiding controversy and obtaining immunity, "Receipts" which in large part were fictitious which necessitated partially fictitious over-ceiling cash "Disbursements" in order to have a balancing accounting entry. The "disbursements" shown on the tabulations were without tax significance because over-ceiling disbursements were not going to be allowed as deductions. Cain The "Disbursements" shown on the tabulations were had been told by Busby and by Sauber, as Treasury Regulations (I. T. 3724, 1945 Cum. Bul. 57) then required, that Shotwell would receive no credit for over-ceiling disbursements but would be taxed on the gross amount of premiums received (R. 252, 257-274). Cain therefore instructed the accountants simply to put in balancing figures for disbursements which he knew were not going to be allowed (R. 2586) but which would make the account balance (R. 233,

2597). It is these disbursement figures, in part admittedly fictitious, but on which no tax deduction was claimed, nor tax consequence expected, that have plagued the case ever since.

When the figures were totalled and put into what became known as the "Disclosure Recapitulation" or "Summary" (longhand form, R. 3090; typewritten copy, R. 3096, also G. Ex. 186, Ex. Vol. I, p. 117), they showed a total "Account Receivable" (from Lubben) of $426,000, less items assertedly uncollected of $48,000, resulting in "Collections" of $378,000. These "Collections" were balanced by "Disbursements" which were computed by deducting the actual $5,898 terminal balance which remained when the transactions were closed and assigning arbitrary amounts to over-ceiling "Disbursements" in the manner Cain had described.

THE SURRENDER OF MATERIAL TO REVENUE AGENT LIMA.

Revenue Agent Lima was assigned to make the audit of Shotwell on July 30, 1948 (App. 1345). By appointment Lima met Busby at the plant on one of the first days of August. Busby described the nature of the black market transactions and how he had prepared the figures on the "Recapitulation" (App. 1349, 1392, 1401). He gave Lima a copy of the "Recapitulation" or "Summary" which the latter was to take back for discussion with his Group Supervisor, Johnson (R. 189, 1351, 1461). The various supporting work sheets were available and Busby explained how they had been prepared (R. 2810, 2839). Lima spent two or three days (App. 1512) making a "preliminary audit" to determine facts that he thought pertinent to discuss with his supervisor (R. 323, App. 1497, 1500); he said he would do nothing further until he had instructions from the latter (App. 1356). He did discuss the matter with

Johnson, who told him he could allow black market deductions if they could be "substantiated," or if Busby's formula for computing them could be approved (App. 1401, 1460, 1534). Lima was uncertain whether he could handle the case or whether it should be transferred to the "Fraud Squad" (App. 1458) because the Bureau then was blowing "hot and cold" on black market cases (App. 1398-1399).

Lima's supervisor, Johnson, told him "that 'under the way the Bureau policy was at that time, that since we couldn't discover any black market activities on the books of the corporation and since the taxpayer had come to us voluntarily and showed it to us and there was a formula by which it was computed, that the Bureau would accept that as a basis of writing a report and it wasn't necessary to contact * * * the Fraud group.' That was his duty, to find out how this case should be handled" (App. 1533). Lima then did some office work; whether he partially filled out an agent's report or merely made computations is disputed. A short time later Johnson asked Lima to attend a meeting with the "Fraud Squad." The case ultimately was transferred to it and Lima destroyed whatever he had prepared. During the fall Busby pressed Lima as to whether Johnson had made a decision as to how to proceed and was told, according to Lima himself, that he had not (App. 1362) or that it was out of Lima's jurisdiction (App. 1508).

On September 22, 1948, a Special Agent (the same Sam Krane) from the Fraud Squad was assigned to the investigation (R. 3158). The large accounting sheets from which the "Recapitulation" had been made were delivered to him (R. 194). In February 1949, Revenue Agent Mammel replaced Lima (R. 197). Mammel said he was short of help and asked the company to provide clerical assistance. Mr. Busby, or people from his office, were provided to assist Agent Mammel at a cost of $20,000 to Shotwell (R. 200).

In October 1949, Maumel's investigation was still continuing. Petitioners Cain and Sullivan went to Ernest C. Wright, Agent in Charge in Chicago, and complained that the methods being followed by Agent Mammel were disrupting personnel in the office and asked to have the examination speeded up. About a year later the examination was still continuing and they repeated their request. They told Wright that they did not want him to do anything improper but to wind up the investigation and give them an assessment which they would pay. On both occasions Wright told them that if they would not reveal the identity of the recipients of the black market "payouts", the investigation would continue (App. 1001-1007. See also R. 241, 259, 273-4, 3156). (There can be no doubt that Internal Revenue was applying pressure to the Shotwell officials to induce them to turn informer on companies or persons—recipients of Shotwell's black market "payouts"—who might prove to be tax violators. This was shown not only by Agent in Charge Wright's testimony on the reopened hearing but by an official report which Sauber made of a talk he had with Wright in 1950 in which Wright advised him "the case would not be closed until the employees of the Shotwell Manufacturing Company co-operated with their Government and disclosed the names of the individuals to whom these over-the-ceiling payments were made" (R. 3156).)

During the long period between the spring of 1948 and until about March 1, 1952, petitioners were under the belief they had achieved immunity. None of the agents they had importuned to arrive at an assessment ever told them the disclosure would not be honored. About March 1, 1952, Agent Krane told Cain the Treasury had recommended prosecution (R. 236-7).

THE JURY TRIAL OF 1953.

The disclosure "Recapitulation", its large supporting sheets, and voluminous other data which petitioners had had prepared and surrendered in reliance upon the promises of immunity and in the belief they had achieved it, were introduced against them (Ex. 185, R. 2586, 2588; Ex. 186, R. 2811; Ex. 189A-E, R. 2817; the clearest reproductions of these Exhibits are those attached to the Petition for Certiorari p. 85 ff.) with damning effect. As Government counsel put it on the appeal:

> "* * * the most damning aspect of the [trial] evidence * * * was the corporation's own admission, through Busby's work sheets and summary, that it had received approximately $400,000 in overages from Lubben during a period extending over 1944, 1945 and 1946. (Br. for U. S. in Ct. Apps. on first appeal, p. 46.)
>
> "The structure of the Government's case rests upon two main arches, Lubben's direct testimony as to the payments, and appellants' own admission that they received about $400,000 * * *." (*Id.* p. 57.)

The figure of $400,000 was recited repeatedly to the jury (over objection) as Cain's "own figure" (R. 2580, 2583).

THE FIRST APPEAL.

The Court of Appeals for the Seventh Circuit in its decision of the first appeal on June 15, 1955 held that "Defendants made a valid, voluntary disclosure, in reliance upon promises of immunity. The evidence thereby obtained by the Government stands on the same footing as an oral or a written confession induced by such a promise. The use of such evidence at the trial was a violation of each defendant's privilege against being compelled in any criminal case to be a witness against himself, as guaranteed by the Fifth Amendment to the Constitution of the United States." It directed that the evidence so obtained be suppressed and the case be retried.

THE "REINVESTIGATION" WHICH LED TO SUPREME COURT PROCEEDINGS.

In March 1955, about two months prior to oral argument in the Court of Appeals, undisclosed officials in the Enforcement Division of the National Office of Internal Revenue embraced a "strong suspicion" that the disclosure might not have taken place in March 1948; in late April 1955 inspectors were assigned to a full scale investigation of the matter. (See Stein aff. attached to Mo. to Remand on original proceedings in this Court.) No inkling of this "strong suspicion" or of the re-investigation was given to the Court of Appeals, which was permitted to decide the case without warning that if the decision should be in favor of petitioners the Government might claim the record was "tainted."

The Treasury's so-called "reinvestigation" of the case continued on an unannounced basis during most of the remainder of 1955. In October 1955 the government filed its Petition for Certiorari to review the Court of Appeals decision of June 15, 1955. On December 1, 1955 the Chief Counsel of Internal Revenue Service wrote to the Justice Department saying that investigation had uncovered newly discovered evidence which was "in direct conflict with the testimony of the witnesses Busby and Sauber and the defendant Cain" and which was said to show that "in fact no one on behalf of [Shotwell] furnished the Internal Revenue Service *any information bearing upon or relating to its unreported black market receipts" until July 1948.* (What this supposed evidence "in direct conflict" was remains a mystery for such evidence never was produced.) On December 6, 1955 the Solicitor General wrote to the Clerk of this Court attaching the Chief Counsel's letter and requested the Court to withhold action on the pending petition for certiorari. On December 9 counsel for petitioners

wrote to the Clerk protesting the Government's position. (We assume this correspondence is in the Clerk's files.)

The development of the alleged "new" testimony which ultimately was presented to this Court was a lengthy affair in which the witnesses repeatedly and drastically changed their stories as the investigation proceeded. Commencing in April, 1956 the investigation was headed by Justice Department lawyers working with the aid of a specially empaneled grand jury. The process took so long that in June, 1956 this Court again was requested to withhold action on the certiorari petition so that the witnesses might be further interrogated. Virtually without exception Judge Nordbye has found that the stories the witnesses told the prosecutors (or the new grand jury) at the *beginning* of the re-investigation, rather than the improved versions tendered to this Court, were the truth.

In the presentation of facts as to this endless interrogation, rather than stating the facts in strict chronological order we group them by witnesses because we believe this makes for easier understanding. (The status of the so-called reinvestigation with relation to the contemporary status of the case as it proceeded in this Court may be ascertained by consulting the "Chronology of Litigation," Appendix C hereto.)

Graflund.

The importance of Graflund's asserted new testimony can be appreciated only when it is related to the Government's legal contentions of 1956 and 1957: Government counsel, *after* the first Court of Appeals decision, took the legal position that June 21, 1948 marked the so-called "timeliness" date after which Shotwell could not have made a timely voluntary disclosure. This theory was based on the fact that on June 21, 1948, Revenue Agent

Sam Krane of the Chicago Internal Revenue Office, at the request of New York revenue agents who were investigating Lubben, went to the Shotwell plant to obtain from Shotwell's files evidence for use of the New York agents *in their investigation of Lubben.* Since whatever Agent Krane did on that date was a step solely in the investigation of Lubben rather than Shotwell, his actions did not constitute an "initiation of investigation" of the Shotwell case, and counsel's legal theory was unsound. Nevertheless, proceeding upon that legal theory Government counsel asserted to this Court that allegedly "new" evidence would show that "no move was made by [petitioners] to disclose the corporation's unreported black market receipts prior" to this June 21, 1948 occurrence (Br. for U. S., No. 1 O. T. 1957 p. 25; also this Court's opinion in 355 U. S., Notes 13 and 21).

To persuade this Court that the entire fabric of petitioners' contention that the disclosure had been made long prior to June 21, 1948, was rank perjury, the Government argued that Busby *could not* have made the disclosure before that date because he had no knowledge of the black market transactions until after June 21, 1948. Graflund was to establish the latter asserted fact.

As a result of the new hearing Judge Nordbye found (a) that Busby *did* learn of the black market facts from Graflund on a train coming back from New York in January 1948 (App. 1760), and (b) that Busby voluntarily went to the Treasury "*sometime* before" June 21, 1948 (App. 1760-1761.)

The following shows how the "new" and false proof by Graflund tendered to this Court came into existence:

On November 8, 1955, Treasury investigators took a five-hour voice recorded statement from Graflund in Chicago (App. 985, 1096) which covered the case generally and con-

cluded with Graflund saying he felt he owed the Department something because he "could have been indicted with the others" and felt "grateful" (App. 1110-1111). (It was not until February 1957, as we shall see, that Graflund ever made the statement, that he subsequently made in an affidavit for this Court, that he had not revealed the black market facts to Busby in January 1948.)

Sometime between April 4 and May 10, 1956, the prosecutors interviewed Graflund at length, and on May 10, 1956, Graflund gave them a 58 page (App. 986) recorded statement in which he repeatedly told of his trip with Busby to Lubben in New York in early January 1948; he described his revelations to Busby vividly, said that when he revealed the facts to Busby he "was not sparing the horses" and expressed the opinion that the over-ceiling transactions might be about $100,000; he said also that sometime in January 1948 Huebner procured some records from Lubben and that Huebner acquainted Busby with them prior to the time they were worked with at the Belden-Stratford Hotel (App. 1125-1130). (The contradiction between this statement and what Graflund ultimately put in his affidavit to this Court is complete.)

Graflund was not taken before the grand jury until late August 1956. Before he was taken to the jury he was brought into an extensive joint interrogation with Huebner, which resulted in a 21 page typewritten memorandum (App. 555).

On August 28, 29 and 30 Graflund testified before the grand jury (App. 1151) and repeatedly swore that he fully informed Busby of the black market dealings in the club car of the 20th Century Limited returning from New York to Chicago in early January 1948 (App. 1198-1204). He made no claim that Busby did not know of the black market transactions until late June or early July 1948 (App. 1138). His testimony not only fully corroborated Busby's original

rather terse testimony that he had thus learned of the black market transactions (R. 170, 211-212, 1827, 1829) which led him to advise that disclosure be made, but went beyond and elaborated upon it with convincing details (App. 1198-1204).

About three weeks later, September 19, 1956, prosecutor Russo executed the principal affidavit attached to the Motion to Remand here. Supposedly, it was based upon what the witnesses had told him, but it did not mention that Graflund had been interviewed repeatedly and fully corroborated Busby's original testimony as to how, and approximately when, the latter had learned of the black market transactions; nor did Russo's affidavit indicate that Graflund supported Busby's testimony that during the spring of 1948 Graflund had worked with Huebner in an effort to reconcile and reconstruct the Lubben account (App. 1165-1166). On the contrary, the Russo affidavit contained a sweeping and unqualified assertion that:

> "From statements of fact within the personal knowledge of witnesses interviewed and interrogated by me, and from facts and circumstances already in the record, it appears that prior to June 21, 1948 * * * no disclosure, voluntary or otherwise, had been made by Busby and Cain to Sauber or to any other official or employee of the Internal Revenue Service."

Graflund apparently was left alone during the closing months of 1956; the year ended with Graflund still corroborating the genesis of the disclosure *i. e.*, his revelation of the facts to Busby in January, 1948 and the latter's advice to disclose. Meantime on December 24 petitioners' Answer to the Amended Motion to Remand, strongly contesting the sufficiency of the showing, was filed here.

In this posture of the case the prosecutors had another go with Graflund on February 3, 1957. It apparently was unsuccessful for no memoranda was made of it (App.

1205). The prosecutors then brought Lubben to Chicago from Puerto Rico (App. 946) and on the 17th of February a conference was arranged which brought together the prosecutors, Lubben, Graflund and Huebner (App. 1205). Three days later, February 20, 1957, Graflund was again taken before the grand jury. He now recanted all of his previous testimony that he had informed Busby of the black market dealings in January 1948 and for the first time in recorded form gave the story that Busby appeared to know nothing about them until Graflund went to the latter's house (so he claimed) in late June 1948. He explained this switch to the grand jury as follows:

> "A. Well, with subsequent conference with Mr. Krafie of the Internal Revenue and Mr. Russo and Mr. McNelis, I saw vouchers from Mr.—no that is not the one, that is another point.
>
> "*In our conversation* it came to my mind, this trip of mine to Mr. Busby's home [in June] about which I had completely forgotten * * *" (App. 1287).

The "conversation" with the prosecutors and investigators that Graflund referred to necessarily was his February 3 or February 17 interrogation, because he had not been in touch with them at any time after his August 30, 1956 appearance before the grand jury at which he repeatedly had sworn he informed Busby of the black market dealings on the train in January 1948.

Although this conversion of Graflund to a radically different version was the capstone to the prosecutors' case, this asserted fact was not reported to this Court for some six months. On August 17, 1957, an affidavit which said Busby appeared not to know of the black market transactions until after June 21, 1948 was prepared for Graflund's signature and he executed it (App. 1120-1125). Two days later the affidavit was sent to this Court by means of a simple transmittal letter to the Clerk. Neither the affidavit nor

the transmittal letter gave the Court any knowledge whatsoever that the affidavit actually was a recantation of a solemn statement Graflund had given in May 1956 (App. 1125-8) and of sworn grand jury testimony given at length in August 1956 in which Graflund had pointed out, *as Judge Nordbye has now found the fact to be* (App. 1760), that Graflund had revealed the facts to Busby at length in January 1948.

The vital importance of the affidavit is clear from what appears in this Court's opinion in 355 U. S. commencing at page 239, and is further clear from the importance attached to the affidavit by footnote 13 thereto.

Lima.

Revenue Agent Lima was the agent who actually commenced the investigation of Shotwell pursuant to the disclosure. No affidavit from him was filed with this Court in support of the Motion to Remand. Instead, representations were made in the prosecutors' brief which was filed in August 1957 that if the case was remanded, Lima would testify that sometime in 1948 he had prepared a Revenue Agent's report showing a tax deficiency of about $20,000 which he subsequently destroyed at his supervisor's direction (355 U. S. 233, 240, n. 15). Lima testified as a Government witness at the original suppression hearing in 1952 (R. 319, ff.) and on the jury trial in 1953 (R. 2804, ff.), and gave no testimony of this nature at all.

On August 10, 1955, after the re-investigation of the Shotwell case had been in full swing for about four months, Lima, who had been transferred from Chicago to the Tampa, Florida, Internal Revenue Office, was brought to Washington for extensive interrogation. On that date he gave a 29 page sworn statement (App. 1419) in which he told nothing materially different from the brief testimony

he had given on the original proceedings or that was in any way inconsistent with the Court of Appeals decision. Specifically, at this August 10, 1955 interrogation, Lima said nothing about preparing a Revenue Agent's report or making a $20,000 tax estimate or about obtaining a 870 Form for use in closing the case out (App. 1418-20).

In July 1956 Lima was brought to Chicago from Tampa and after considerable private interrogation by the prosecutors was taken before the grand jury on July 26. Although interrogated at length, he still gave no testimony about any settlement at any amount whatsoever, about computing a tax at approximately $20,000, or making out, either partially or completely, a Revenue Agent's report (App. 1437-1441).

The prosecutors were not satisfied. In October 1956 Lima was brought back to Chicago. He was subjected to considerable interrogation and became "scared" (App. 1444). He was then subjected to a lie detector test. Under the lie detector he said he did *not* recommend that the case be settled for $20,000; that he did *not* submit or prepare a revenue agent's report, and didn't know whether a Form 870 was prepared. He told the operator he had been interrogated so much that he had trouble recalling what was in his mind and what he had heard or what had been asserted to him during the lengthy investigation (App. 1445-1451, 1455, 1456, 1478). After further interrogation (App. 1453) and being told that the lie detector test was inconclusive, Lima was again taken before the grand jury and still gave no evidence as to preparing a report, a $20,000 tax, or anything about a Form 870 (App. 1465). Moreover, he told the jury that he had formed an impression about August 1, 1948 that Busby had learned of Shotwell's black market problems at least from 3 to 5 months prior to the August 1948 date (App. 1387). At this time, October, 1956, there was nothing of material importance

in Lima's testimony that contradicted anything anyone had testified to originally.

But Lima was not left alone:

On December 19, 1956, he was brought to Washington for further interrogation. He gave an additional 32 page sworn statement (App. 989). In this he began to change his story, for he now sometimes talked about having filled out a Revenue Agent's report (App. 1483), although at other times he said he had merely made "computations" of what a tax might be (App. 1495). He made no mention of having either procured or having made out a Form 870 (App. 1478-9) as he subsequently was to testify on the remanded hearing.

On January 22, 1957 Lima was brought to Chicago and subjected to still further interrogation (App. 1501-3). On the following day he was taken before the grand jury and swore he had filled in the formal parts of a revenue agent's report in the summer of 1948 (App. 1505), had computed a tax of approximately $20,000 (App. 1504), but was hazy and did not remember whether he had obtained a Form 870 (App. 1479). He had no knowledge that the Shotwell tax case was fixed and had heard nothing of any money being passed to anyone (App. 1513). He explained his recantations and changes to the jury as follows: "* * * When I testified the first time I thought I knew just a little about this case, and, by golly, with all these conferences and interviews and refresher courses, it is amazing how much I know about it today" (App. 1382).

"Right after" Lima gave this testimony Prosecutor Russo promised to help him if he got in any trouble (App. 1486-7).

Huebner.

The prosecutors' contact with then defendant Huebner appears to have first been made in late March or early April 1956. The new grand jury was sworn in on April 9. There is some uncertainty as to whether Huebner met with the Government attorneys and investigators before the grand jury began sitting or immediately afterward (App. 714), but in some unknown manner contact was established and continued from thence on. In April or May 1956, Huebner secretly, and without discharging his counsel of record, authorized another Chicago lawyer to continue negotiations with the Government (App. 711), and from this time on Huebner "cooperated."

On July 22 and July 24, 1956, Huebner gave the prosecutors lengthy tape recorded conferences from which they prepared a 21-page memorandum on July 28 (App. 555). In this Huebner stated that "overages" (black market premiums on candy) did not commence at the rate of 10¢ a pound, as Lubben had claimed, but at 5¢ a pound, and, quite contrary to Lubben's account, he said there were certain goods that did not bear any overages whatsoever (App. 750; 952); that Lubben's records indicated he was "trying to lay off money on somebody." (App. 795-6; 791.) (Before Judge Nordbye Huebner doubled the rate of "overage" to 10¢ and his recital of alleged payments necessarily was based upon Lubben's falsified so-called "records.")

Huebner was interrogated every few days during late July and August 1956. On August 21 he was taken before the grand jury, still swearing that overages started at the rate of 5¢ a pound (App. 947-952).

Private interrogation still continued. A lengthy session took place on August 26 (App. 555).

On September 17 Huebner was interrogated with respect to a possible meeting in the Chicago Athletic Club with Sullivan and one Urban in July 1948 at which purchase and destruction of Lubben's records supposedly was discussed. Huebner didn't recall ever being in the Chicago Athletic Club with Urban (App. 854).

Nevertheless, on the following day, September 19, 1956, Prosecutor Russo executed the principal affidavit for attachment to the Government's motion to remand which we have alluded to in our statement as to Gratlund. In that affidavit the prosecutor recited by hearsay that one Edwin T. Urban, an officer of another candy company which had had black market dealings with Lubben, had informed the prosecutor that in July 1948, at Huebner's invitation, he had met and had lunch with him and petitioner Sullivan at the Chicago Athletic Club and that there was discussed a purchase of Lubben's companies for the purpose of acquiring and destroying Lubben's records.[15] Mr. Russo did not tell the Court that he had already had Huebner before the grand jury where he gave no such testimony and that Huebner had given him a memorandum denying what Russo said Urban had said.

The prosecutors were not content with Huebner's denial of any meeting at the Chicago Athletic Club to discuss purchase of Lubben's companies for the purpose of obtaining his records and went at him again on September 26, 1956. But Huebner still "recalled nothing" of any such occurrence (App. 854). However, by December 19, 1956, Huebner had "remembered" and on that day signed the affidavit which was attached to the supplement to motion to remand filed in this Court on January 9, 1957, in which he parroted the Russo affidavit, saying:

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15. It may be noted that on the Supplemental hearing Urban did not testify. The prosecutors produced a doctor's statement that he was too ill so to do (App. 1190).

"Early in July 1948, on Sullivan's instructions, I arranged a meeting at the Chicago Athletic Club with one Edward Urban of Close and Company, which also had black market transactions with Lubben. At the meeting Sullivan discussed with Urban the possibility of forming a group to purchase Lubben's business interests in order that Lubben's books and records could be obtained. No mention of voluntary disclosure was made at the meeting."

HUEBNER'S SECRECY.

It is to be noted that the motion to remand was filed in both an original form on October 15, 1956 and in an amended form on November 15 for the purpose of correcting certain inaccuracies in the original form that are not now material. Counsel for petitioners had been informed almost simultaneously with the filing of the original that it was to be changed and took no steps to prepare an answer until the amended document came in. On November 18, 1956, petitioner Cain suffered a severe heart attack (App. 125); it was impossible for him to aid in preparation of a response to the amended motion. On the following day, November 19, Huebner's counsel of record called Huebner; told him the motion to remand was about the most important thing in his life and begged him to come to the office and discuss it; that Russo had filed an affidavit about Urban and a plan to buy out Lubben and was trying to make it appear that nobody did anything about a disclosure until sometime in July; that the Russo affidavit was vague and hearsay but had to be answered and that Huebner was the one that had to tell counsel about it because there wasn't a chance counsel could talk seriously with Cain before the answer was due about the 22nd of December. Huebner replied he was too busy making candy (for another candy manufacturer); that he was in the Christmas business

and soon would be in the Valentine business. His counsel replied (profanely) that this was nonsense (App. 709-711). The conversation was so startling that his counsel of record made a memoranda of it.

Huebner's various conferences with the prosecutors narrated above and his grand jury testimony had all been given secretly and without the knowl dge of his counsel of record. Huebner asserted on the new hearing that never once during the interval of some 7 or 8 months until his masquerade was discovered had the prosecutors told him that they could not talk with him behind the back of his attorney of record and that Huebner should discharge him (App. 718), nor that if what he was doing was honorable and truthful he didn't have to secrete it from anyone but could come out and tell everyone he was being an honest man (App. 743, App. 746).

THE EFFECT OF THE INTERROGATIONS UPON THE MINDS OF WITNESSES.

As the chronology attached hereto and the foregoing portions of this statement show:

(a) Revenue Agent Lima was interrogated at least nine times (and in lengthy sessions) between 1955 and 1957. At the time he was subjected to the lie detector test he said he had been talked to so much that he had trouble recalling what was actually true and what he had learned from other sources (App. 1450-1, 1955-6); he told the operator he was "positive" he had not prepared a Revenue Agent's report (App. 1450); he asked the operator, "How I could answer a question *properly* [*sic*] when I had heard different stories about what had happened" (App. 1456). He was told it was possible he might be indicted (App. 1484,

1523-4) and that he might be fired (App. 153).[16] He first denied that there was any talk as to whether the Treasury's attitude toward him might be influenced by whether he "co-operated" but he then was asked:

> "Q. Nobody ever said to you at any time 'Mr. Lima or, Joe, co-operate with us and let's see how this thing pans out,' or 'Co-operate with us, and maybe we can make a recommendation for you'; nobody ever said anything like that to you, is that right?"

It was necessary to demand an answer three times before Lima admitted:

> "A. Well, I have been told that if I ever got in trouble they would help me out possibly or assist me if they could.
>
> "Q. All right who told you that?
>
> "A. Mr. Russo" (App. 1485-7).

When Lima was finally taken before the Grand Jury for the *third* time in February 1957 and told the story that the Government's brief in this Court asserted he would tell if the case were remanded, he explained his numerous recantations as follows:

> "* * * when I testified the first time [before the Grand Jury] I thought I knew just a little about this case and, by golly, with all these *conferences* and *interviews* and *refresher courses*, it is amazing how much I know about it *today*" (App. 1382).

(b) Huebner was interviewed "many, many times" (App. 715), with his testimony gradually coming into accord with the theories of the Motion to Remand. On the reopened hearing he was so repeatedly impeached and con-

16. Lima was shown to be a middle-aged man of mediocre ability who had twice failed to pass a certified public accountant's examination. He is married and has children. Loss of his job obviously would be a disaster. Cf. *N. L. R. B.* v. *Griswold Mfg. Co.*, 3 Cir., 106 F. 2d 713, 722: "* * * the employee is sensitive and responsive to even the most subtle expression on the part of his employer, whose good will is so necessary * * *."

tradicted by his own prior recorded statements, some under oath, some not, that he could explain his answers only by saying at least 22 times:

"My memory was refreshed" (App. 701, 720, 721, 750, 759, 762, 771, 772, 778, 785, 823, 855, 858, 900, 931, 952, 958, 970).

He once said (quite descriptively) that he had "*rehashed* [his] memory again" (App. 750).

Again:

> "• • • when I rechecked my memory *with the Government* I found out I was wrong," (App. 846).

and

> "Since then I have changed my mind," (App. 897).

and, when he "forgot" something he previously had been able to recall,

> "At this time, my recollection is that I don't recall" (App. 742).

Because Huebner could not, on the reopened hearing, testify to facts he honestly recalled, *it was necessary for him virtually to memorize his testimony.* The questions and answers were written out in advance of the hearing. On the hearing Prosecutor Russo read the questions from a notebook while Huebner parroted back the answers in a monotone. On cross he was asked:

> "Q. How many different times have you gone over these questions and answers?
>
> "A. I can't say. I went over the questions and answers maybe five, six, seven, eight times. I don't know exactly.
>
> "Q. Before you testified this time?
>
> "A. That is right." (App. 823; see also App. 938).[17]

17. Typical of much of the record is the following, not as detailed as some "explanations" of radically changed, important

(c) Graflund has been discussed *ante* pages 29-34. In addition to the startling change in Graflund's testimony there discussed there were other equally radical changes which are not described in the District Court's opinion, which merely admitted that there were "glaring inconsistencies and contradictions which appear in the testimony of Huebner, Graflund and Lubben in light of their prior statements and their testimony before the grand jury" (App. 1769).

Reference to some of Graflund's variations is illuminative of what can happen when prosecutors are given an opportunity to pursue witnesses in an effort to salvage a conviction. Some of these changes were on matters which we believe were not material to the remanded issue as to disclosure. They are material however to an inquiry as to whether proper processes of criminal law were abused and whether Graflund was "brain washed" into nonsensical stories.

In the process of the reinvestigation Graflund finally got to the point where he was willing to tip his whole 1953 trial testimony, and that of many other witnesses, upside down and say that no over-ceiling payments from Lubben were received openly by Shotwell until after January 31, 1946 (App. 1029). Such testimony, if believed, would support a claim that until that date everything that Lubben paid went into the personal pockets of Huebner, Cain and Sullivan. The fact was that on the jury trial witnesses

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testimony were, but illuminative, taken from the cross-examination of Huebner:

"Q. After you had four or five or six conferences with the Government agents [in the summer of 1956], your memory was still that you didn't get any money until in September or October of 1945 and you didn't know how much it was then? [He testified before Judge Nordbye that he got money months earlier.]

"A. At that time, that is correct.

"Q. After you conferred with the Government agen some more, your memory changed?

"A. That is correct." (App. 772)

Roeser (R. 1703-9), Mrs. Morrill (R. 779-782), Cain (R. 2546, ff.), and Graflund had testified that over-ceiling payments from Lubben were openly received at the Shotwell plant commencing in the fall of 1945; the money was placed in a cash box at the Shotwell plant from which withdrawals were made for premium payments on raw corn. Graflund had testified to this procedure repeatedly in 1953 (R. 1780-1, 1740, 1783, 1787, 1788, 1789). When the reinvestigation of the case started in 1955 Graflund told Government agents in November of that year (App. 1119), and again in August 1956 (App. 1140-41) that the "corn box" was opened in the fall of 1945; before the grand jury in August 1956 he testified repeatedly that in the fall of 1945 he learned money was coming in from Lubben for corn (App. 1206-1210); further, that excess money beyond that suitable for retention at the plant was kept in a safe deposit vault at the City National Bank for a period of about nine months from the fall of 1945 through the first six months of 1946 (App. 1213); that money went into the corn box at the plant from September 1945 through June 1946 (App. 1219-1220). All of this was to be swept aside.

During his February 17, 1957, interrogation, at which Lubben was present, the prosecutors showed Graflund certain checks which Lubben had cashed in Chicago in November of 1946, "and Mr. Lubben satisfied me *that* had to be the time and not November of '45" (App. 1291), yet he wound up testifying before Judge Nordbye on direct examination on the remanded proceeding in December 1958 that corn transactions did not begin until late January 1946 (App. 1029), and that he got an unstated sum of money from Lubben not, as Lubben had "satisfied" him, in *November 1946* but some nine months earlier, in February or March 1946 (App. 1035). One difficulty with this testimony (apart from the recantations and switches involved) is that whatever Lubben may have persuaded Graflund of when he aided the prosecutors in the inter-

rogation of February 17, 1957, Lubben nevertheless had sworn on the trial in 1953 that all his asserted payments in February and March 1946 were to Huebner and not to Graflund. At the trial in 1953 Lubben did not claim he made any payment whatsoever to Graflund personally until October or November 1946, and that asserted incident Graflund had denied (R. 1789).

But even this is not the end of the story: On February 20, 1957, immediately after Graflund had been vouched by Lubben in the February 17, 1957 interrogation, Graflund swore to the grand jury that Lubben paid him $15,000 in November 1946 and that it went into the cash box (App. 1290-1291). Someone realized that such a story could not possibly hold up because there was far too much testimony, including Graflund's, that the cash box had been closed some four months before that date. So in December 1958 Graflund switched again and told Judge Nordbye he got an unstated amount of money in February or March 1946. Thus the witness swore three ways: first, repeatedly on the trial, and repeatedly before the grand jury in August 1956, that he knew all about corn transactions in the fall of 1945 and got one payment from Lubben at that time; second, before the grand jury in February 1957 that he got one payment of $15,000 in November of 1946; third, upon the remanded hearing, that he still got only one payment but it was in February or March of 1946 and he didn't know how much it was. The District Court passed this entire matter after recognizing that there were "glaring inconsistencies and contradictions" in the testimony (App. 1768-1769), with the observation that it was not important to determine on the remanded hearing the exact period of the existence of the corn box or the exact amount of Lubben's money which was used to purchase raw corn (App. 1763).

Two other pieces of Graflund's testimony deserve atten-

tion. Again we do not believe they were material to the issue this Court remanded to the District Court and this Court cannot resolve the fact questions; nevertheless are illustrative of the dangers of ceaseless interrogations and "refresher" courses by prosecutors:

Graflund testified on the 1953 jury trial that he got surplus cash money out of the bank vault only on Huebner's instructions and always took it directly to the plant (R. 1746, App. 1149-1150). However, at the new hearing he testified to an asserted episode of meeting petitioner Cain at the bank, counting out $5,000 and giving it to him for some purpose of straightening out sugar allocations. He was unable to give any reason why he had not mentioned this asserted dramatic episode before (App. 1150). His failure to assert such an event in 1953 is inexplicable in view of the fact that the remanded hearing developed that even in 1953 Graflund was co-operating with the Government. Cain swears nothing of the kind occurred (App. 1607).

Again, on the remanded hearing a desperate effort was made to show that some of the Lubben money was physically handled by petitioner Sullivan. Graflund testified before the grand jury in August 1956 that in *late 1945* he took Sullivan to the bank vault so that Sullivan could simply count—not take out—$10,000 in currency (App. 1300-1301). Such testimony did not fit a new theory the prosecutors had developed that none of the cash was utilized by Shotwell for corn until after February 1946, nor would it jibe with bank records which the prosecutors had had in their possession since 1952 (App. 1340-1341) showing that no person not authorized to sign for entry to the bank vault (and Sullivan was not) had had entry to it in the last nine months of 1945. The prosecutors then put the bank record before Graflund, which showed that a person not authorized to sign had been in the vault with Graflund on January 31,

1946, and Graflund promptly swore to the grand jury that the person was Sullivan (App. 1303).

On cross-examination before Judge Nordbye Graflund agreed that the bank record faced him with the choice either of abandoning entirely his assertion that he took Sullivan into the bank vault or of placing that asserted episode at January 31, 1946. He chose the latter alternative (App. 1306), despite the fact that he had testified that at that date there was no cash on hand whatsoever for Sullivan to count, and that he had had to draw checks on that day for currency so that he could get cash money for black market purchases (App. 1306). The true fact proved to be that the person who had been in the bank vault with Graflund on January 31, 1946 was R. J. Metzger, an auditor, who went there in connection with the annual audit of the company. The development of that clinching evidence on the remanded proceeding of course required great effort (App. 1321, 1323, 1342, 1375, 1545-1548), and in the process the prosecutors tried to thwart every effort to have the full facts developed by meaningful cross-examination (App. 1547).

THE NEW INDICTMENT FAILED TO ALLEGE THE PERJURY CHARGED HERE.

On February 25, 1957 this Court granted the Government's petition for certiorari. Two days later the new grand jury brought in a lengthy indictment against petitioners charging conspiracy (copy is an Appendix to Brief for Respondents when case first here, No. 1 O. T. 1957). Although the Government was asserting to this Court that the testimony in this case as to the making of a voluntary disclosure reeked with perjury by describing an entire series of disclosure events that had not taken place at all, *the grand jury before which the evidence was developed made no such accusation whatsoever.*

THE PROCEEDINGS IN THIS COURT.

This Court's ultimate order of remand was based almost entirely on the Supplement to the Motion to Remand which was based on the Huebner affidavit, the Graffund affidavit filed after certiorari had been granted, and the representations in the brief for the United States as to what Lima would testify. From each of those documents, as we have seen, determinative facts helpful to petitioners, and testified to under oath by witnesses wholly beyond the control of petitioners, were withheld from this Court. All material reflecting on the credibility of the affiants and showing how they repeatedly had changed, switched and recanted their stories, was suppressed. Nor did any document filed with the Court inform it that important, responsible witnesses to the disclosure events who had testified on the original proceedings, Roeser (R. 2459), Morrill (R. 746), Sproull (R. 2099) and Busby himself had been examined intensively before the Grand Jury and had not changed their 1952-3 testimony.

THE NEW OR SUPPLEMENTAL HEARING IN THE DISTRICT COURT.

Inasmuch as the supplemental hearing ordered by this Court was a novel one, counsel were in doubt as to what the fact issues would be. This Court's opinion of December 16, 1957, had directed that the additional evidence should be confined to the suppression issue, and directed the District Court to make new findings on that issue in the light of the further evidence *and* "the entire existing record" (see 355 U. S. at 245). Just what parts of the "entire record" would be relied on was doubtful.

Counsel for petitioners were of the view that since this Court had listed five subsidiary issues that concerned it,

and had noted the representations as to Lima's testimony in its footnote 15, that in general the hearings should be confined to those charges. Moreover, they were of the view that the Government, in essence, had moved to set aside a prior judgment on the ground of asserted fraud, and had a heavy burden of proof in that regard.[18] Attempts by motions for particulars (App. 145), to limit subpoenas that had been issued (App. 273), to obtain documents and statements (App. 119-124), and to obtain some definition or limitation of the issues prior to the hearing were unavailing (App. 263, 264, 422, 425).

The new hearing, rather than being confined to examination of the charge that no disclosure had been made in early 1948, was permitted, over repeated objections (App. 195-6, 208, 263, 273-80, 303, 391-471, 543-7, 567, 573, 1028, 1781) to cover the entire alleged course of dealing between Lubben and Shotwell throughout 1944-5-6.[18] This was the merits of the case, went far beyond this Court's limited remandment and embraced fields which, if proper at all under the indictment, were only for a jury in a new trial. The prosecution endeavored to show that some of Lubben's black-market payments to Shotwell were not disbursed by it for corn but went to Cain and Sullivan personally. Whether whatever money actually was received was spent for corn or was partially disbursed as the prosecution claimed, and Cain (R. 262) and Sullivan deny (R. 2638), as

18. Shortly after the order of remand the District Court expressed the remanded issue as follows:

> "Of course, the ultimate fact is, I take it, whether the voluntary disclosure was made in July or August of 1948 or whether it was made in March, 1948. That is, after all, the ultimate issue, is it not?" (App. 200).

However, the District Court did not adhere to that view. The prosecutors took the position that they could question Huebner not merely as to when disclosure had been made but

> "• • • *about everything that happened in his transactions with Lubben*" in 1944, 1945 and 1946 (App. 572).

The trial court sustained that position and the hearing on remand became a virtual re-trial of the case on the merits.

so-called "constructive dividends" would make no difference in *Shotwell's* taxes, for neither type of expenditure was recognized as deductible in 1948. But in substance, as the District Court's discursive opinion indicates, on the reopened hearing Cain and Sullivan were put through a bench trial on an alleged crime for which they had not been indicted—personal tax evasion—and in effect found guilty.

LUBBEN PERJURY BEFORE ORIGINAL JURY.

In opening up the entire case the Government showed in 1958 that the original 1953 jury convictions had been obtained by perjury by its star witness, Lubben, on whose testimony the jury verdicts depended.

The District Court in its 1959 opinion did not use the word "perjury" in describing Lubben's 1953 testimony; it used the more polite term, "exaggerated"; but the "exaggeration" was too great to be inadvertent. The District Court, in 1959, found that Lubben's testimony to the 1953 jury was not, as the District Court erroneously then had found "sincere" and "truthful" (R. 3018), but was "exaggerated" (App. 1758), necessarily to the extent of well above 100 thousand dollars on the gross amount involved.

It thus is now undisputed that petitioners were convicted by the jury in 1953 on materially false evidence—evidence which the District Court specifically found that the jury in 1953 believed was true (R. 3073).

On the Petition for Certiorari and the Brief in Opposition on this review, a dispute developed as to the probable *amount* of Lubben's falsifications to the trial jury. We asserted that Judge Nordbye's new findings, fairly construed, admitted that Lubben falsified, *i. e.*, "exaggerated", to the extent of at least $132,000. Government counsel disputed the correctness of that figure. We assert that, in fact, it should be higher. What the precise figure

should be is of course a question for a jury but two items alone show the severity of the question:

Huebner testified on the new hearing that one line of goods, chocolate covered nuts, which Lubben had testified carried a premium of 10¢ a pound, actually bore no overage whatsoever. This item alone amounts to approximately $40,000 (App. 797-800). Huebner also testified that Lubben lied with respect to an alleged item of $49,000 which he claimed he paid to Graflund (App. 809).

Lubben's testimony on the original trial had, in substance, been based on, or refreshed by, his asserted books and records. On the new hearing, Huebner, testifying as a witness vouched for by the Government, admitted that one Daniel Tobias, who at one time had been an accountant for Lubben, and thereafter became an employee of the Internal Revenue Service in New York, admitted, while an Internal Revenue Service employee, that Lubben's books had been altered so that items that had been charged to different companies, were charged to Shotwell; Tobias said he had worked with Lubben in altering the books (App. 969). This evidence came out early in the 1958 hearing. Although the Government knew that Tobias is still alive and maintains offices in New York City (App. 1550), he was not called to deny this admission.

We have previously shown in this Statement that on at least three separate occasions prior to his appearance before the 1956 Grand Jury, Huebner contradicted Lubben's testimony by saying that premiums began at the rate of 5¢ a pound and later were raised to 10¢. Huebner testified to 5¢ when he was before the Grand Jury on October 21, 1956 (App. 947-952). The difference between 5¢ and 10¢ on the tonnage involved was important and would have made it impossible, at least during the early transactions, for Lubben's calculations of overages to agree with Huebner's. By the time the hearing was held before Judge

Nordbye, Huebner had come around to the 10¢ figure. The only explanation offered for the attempted erasure of this vital contradiction was as follows:

> "Q. When did you arrive at this notion you expressed that it was 10¢ throughout?
>
> "A. Through all the different meetings I had.
>
> "Q. When please.
>
> "A. I did not know just exactly when. I had a meeting with Lubben, and I had a meeting with Mr. Graflund at different times, and also with different sheets Lubben had and the Government had that I seen to refresh my memory." (App. 952-955).

THE FINDINGS OF THE DISTRICT COURT ON REMAND.

The "order" (App. 1754), actually opinion, of the District Court upon the remand is so argumentative as to defy succinct analysis.

The theories the District Court arrived at upon the remanded proceeding were:

First, that the proceeding was but a continuation of the hearing on the 1952 motion to suppress evidence, with the burden of proof resting on petitioners (App. 1757). *Second*, that although the disclosure was made, "material facts were not made known to the Government" because petitioners "failed to reveal that substantial amounts of unreported income were diverted into the pockets of the officials of the company," and that the foregoing necessarily was the jury's conclusion in 1952 (App. 1766-1767). Judge Nordbye failed to give any weight to the fact that whatever the jury decided in 1952 was upon materially false, "exaggerated" (App. 1758) testimony of the Government's star witness, Lubben, and upon admittedly "doctored" records. *Third*, that "fraud permeated the showing made * * * in the original suppression hearing, as well as in the trial and in the supplemental hearing * * *. A dishonest and

false disclosure cannot be held to be a timely voluntary disclosure" (App. 1770).

The foregoing sweeping conclusions avoided the carefully enumerated points this Court wished investigated and shroud *the fact that the District Court failed to find any perjury was given as to the disclosure*. The District Court could not have documented any supposed perjury or fraud in the supplemental hearing because petitioners made but a brief affirmative showing thereon, consisting principally of Horgan's evidence as to his conversation in the hospital with Sullivan; *which the Court accepted at true;* the bank officer's testimony which showed that Sullivan could not possibly have entered the bank vault to count money with Graflund, (as Graflund falsely claimed in 1958) *which the Court accepted as true;* and the Chicago Athletic Club records and testimony that Sullivan did not rent a safety deposit box there, *which the Court accepted as true*. These things, (and many others), convincing of petitioners' good faith found no place in the District Court's opinion.

In brief, unable to find that the petitioners ever deceived the courts as to what they did in making the disclosure, the District Court nevertheless damned them by blurring together his views as to tax law, as to the merits of the case for which petitioners were indicted (corporate tax evasion), and as to the merits of asserted cases for which petitioners never have been indicted (personal tax evasion). This process stripped petitioners of their rights to indictments for any supposed crime for which they were to be tried and to jury trials on any such indictments; nor was it responsive to the mandate of this Court which fundamentally authorized the District Court only to find out whether the original decision of the Court of Appeals directing suppression of evidence had been procured by a perjurious

fraud upon the courts in the form of a claim of a voluntary disclosure which in fact never had been made.

On the specific, subsidiary issues enumerated in this Court's opinion (pp. 239, 240 of 355 U. S.), Judge Nordbye responded as follows: (1) He found that the Graflund charge that he had not revealed the over-ceiling transaction to Busby until late June 1948 was false; that Graflund actually had revealed the facts to Busby in January 1948 (App. 1760). (2) As to the charge that at no time prior to July 1948 were Graflund and Huebner led to believe that Shotwell had disclosed the facts to the Treasury, no specific finding was made. Certainly, therefore, the Court did not find that this charge was proved. Moreover, the evidence showed that as early as February 1948 Huebner, in Graflund's presence, was advising others that Shotwell might have to disclose and was being beseeched by them to prevent it (App. 967, 1169-71). (3) As to Huebner's charge that in July 1948 he was "given to understand" that the date of the disclosure "would be set at June 15, 1948," the District Court inconsistently found (a) that Huebner apparently "gathered" June 15, 1948 was to be fixed as a fictional date for a fictional disclosure (App. 1764), while simultaneously finding (b) that the disclosure in fact had been made not only prior to June 21, 1948, but necessarily sometime prior to June 4, 1948, the date on which Sullivan importuned Horgan to get the investigation pursuant to the disclosure under way (App. 1761). (4) As to the charge that no work was done to assemble records or data for the purpose of making a disclosure prior to late June 1948, the Court made the backhanded finding that work in fact was done between January and July (App. 1762) but that no "concerted" effort was made until sometime in July. Essentially, then, the opinion finds that Graflund's and Huebner's affidavits that no work was done to assemble data prior to the middle of 1948 was per-

jury. (5) As to Huebner's claim that in July and August 1948 he gave Cain $10,000 "to fix the tax difficulty," Judge Nordbye found he could not make a "definitive" finding. (6) As to Huebner's claim that he had not been asked to testify originally in the District Court because he would not lie on the stand, Judge Nordbye makes no finding whatsoever, and for the reason that the prosecutors made no attempt whatsoever to support that malevolent charge on the remanded hearing.

Although the District Court's opinion abounds with denunciations of petitioners for fraud, analysis demonstrates that the believed fraud the District Court talks about is what he believes to have been the basic tax fraud. Whether such fraud had existed was a question for a jury in a fair trial. Basically the Court made its private determination as to what it believed true amended returns of the Shotwell Company for 1945 and 1946 should have been, what it believed true amended returns of Cain, Sullivan and Huebner should have been for those years, and then found that some of the representations made after the disclosure did not conform with those views. In the process the District Court overlooked entirely that it was, in effect, convicting petitioners of crimes they had not been indicted for, and was doing so by relying on evidence which had been extracted from petitioners by promising them immunity.

The serious constitutional questions involved are ignored in the Court's opinion.

FACTS AS TO THE INVALIDITY OF JURY SELECTION PROCEDURES.

When the new Grand Jury returned its indictment of February 27, 1957, the defendants in that new case filed motions challenging the composition of that Jury. A hearing was held in that case in June, 1957, before Judge

Barnes. (The S. Appendix here). That evidence showed that the methods used in selecting potential jurors had been in effect prior to the selection of the jurors in *this* case.

Promptly after obtaining that new evidence, defendants moved before the summer emergency Judge (J. Sam Perry) for leave to withdraw their pleas of not guilty for the purpose of filing an amendment to their motion to dismiss the indictment herein because of illegality of the jury. That motion was denied on the ground that the case was in the Supreme Court (App. 16-17). Defendants then moved for leave to take the deposition of Harry D. Crooks, the Jury Commissioner. The affidavit in support showed that Mr Crooks was in poor health and might be unavailable to testify on a future motion. This motion was continued by Judge Campbell for hearing before whatever Judge became regularly assigned to the case (App. 22).

After this Court's decision defendants, on March 17, 1958, renewed the matter (App. 111-114).

At the hearing on the motions it was stipulated that Judge Nordbye should consider the testimony taken before Judge Barnes in the other case (App. 313) and the affidavit of Clerk Johnson (App. 313-4). The affidavit appears at App. 147 and a supplemental affidavit at App. 417. Commissioner Crooks, who had testified before Judge Barnes, meantime had died and his private employee, Richard Jongsma, was examined (App. 315, *et seq.*). The two records together show:

That in selecting prospective jurors from Cook County the Clerk (a) took names from membership rosters of several private organizations, (b) accepted "volunteers," (c) accepted nominations by former grand and petit jurors and a few other persons including persons on the staff of

the District Attorney (S. 127-215); that about 60% of those selected by him were nominated by former jurors and 20% were "volunteers" (S. 168, 169);

That for areas in the district outside of Cook County the Clerk substantially delegated his duty of selection to sundry postmasters who made nominations pursuant to a form letter of instruction (S. 164-168, 196) which had the effect of excluding persons who were not adherents of some established religious faith and which resulted in a substantial number of "volunteers" (S. 162-168; 198, 280);

That Commissioner Crooks entirely abandoned his non-delegable duty of selection to a private employee (one Richard Jongsma) and was unable to say how the persons supposedly, but not actually, selected by him were selected (S. 227, 228, 235, 236, 242);

That Jongsma sent out letters to various clubs, churches and organizations in Chicago and soliciting volunteers (App. 139-145), that questionnaires were then sent to various prospective jurors; that Jongsma, rather than Crooks, read the answers to the questionnaires and decided whether the jurors were qualified to serve; that at one time a citizen had written a letter to the "Voice of the People," a readers' letter column appearing in the Chicago Tribune, complaining about never being called for jury service, whereupon Crooks sent a letter to the writer asking him to serve and sent a copy of it to the newspaper column calling for "volunteers" (App. 316-323);

That the first time Jongsma had realized that volunteers were disqualified as jurors under the law of Illinois was when he was so informed in the hearing before Judge Nordbye on April 21, 1958; he cannot say that there is a single one of the names on either the petit or the grand jury that Jury Commissioner Crooks exercised any personal judgment on (App. 338-9).

The evidence as to the Jury Commissioner's delegation of the exercise of judgment in selecting prospective jurors is shown in the following:

> "Q. You [Jongsma] read the questionnaires and you made the determinations?
>
> "A. According to the stipulation set forth in the law, yes.
>
> "Q. You made them according to your understanding of the law?
>
> "A. That is right.
>
> • • • • •
>
> "Q. Are there any other names we have gone over this morning on either the petit jury selection or the grand jury selection that you are able to say that Mr. Crooks exercised any personal judgment of his own on as to whether a single one of those names stayed out of the jury wheel or went in it?
>
> "A. I can't say that; I don't know." (App. 338-39.)

Jury Commissioner Crooks put it,

> "He [Richard] does all the work, and I take all the honor, if there is any." (S. 229.)

The foregoing quotations show that the finding of the District Court (App. 438) that Crooks made the decisions "although he delegated many of the ministerial duties to Jongsma" is flatly contrary to the record.

In Appendix D hereto is set forth the composition of both the grand and the petit juries and the sources of the names. The Appendix shows that 10 of the grand jurors were selected by the Clerk and 13 were selected by Mr. Jongsma. Of the 23, 9 (39%) were volunteers and 1 was "perhaps" a volunteer; 6 had been recommended by former grand jurors, and 1 had been recommended by a former petit juror (30%); 6 were selected by Jongsma from random use of telephone directories (26%). On the petit

jury, including alternates. 8 were selected by the Clerk and 6 were selected by Jongsma. Jongsma included 1 volunteer; the other 5 of his selections came from telephone directories; 1 of Clerk Johnson's selections came from a list of members of the Illinois Opera Guild, 2 from the membership list of the League of Women Voters (the identical list whose use was condemned in this District several years earlier by this Court in *Glasser* v. *U. S.*, 315 U. S. 60); 2 had been recommended by former petit jurors, 2 by former grand jurors, and 4 by an individual (35%).

SUMMARY OF ARGUMENT.

It is now clear that petitioners, induced by promises of immunity from highest officials of the Treasury and desiring to achieve that immunity, voluntarily went to it and disclosed that there were serious omissions from Shotwell's income tax returns. Thereafter, at the request of Treasury officials, they prepared special computations pertaining to the omissions as an aid to Treasury agents in making a proper civil assessment.

We believe that the proper disposition of this case should have been an overruling of the Government's demurrer to the motion to dismiss, which demurrer in effect admitted the facts above set forth but contended that the promise of the Secretary to grant immunity could not be enforced judicially because he was not authorized to make the promise. Section 3761 of the Internal Revenue Code (1939), and predecessor sections for many years have authorized higher officials of the Treasury to "compromise any * * * criminal case arising under the Internal Revenue laws". Criminal liability may be compromised only by abating or waiving entirely, as was here promised, the criminal penalty. When the "voluntary disclosure" policy with respect to income taxes was first promulgated in 1919 it was recognized by official Treasury announcement, to be a variety of criminal compromise.

Incalculable harm will be done to our national institutions if Federal courts hold that official promises made to citizens by Federal officials may be broken with impunity. The Government cannot afford to show less honor in dealing with citizens than it demands of them.

But even if the promised immunity is not judicially en-

forceable, once it is established that relying on, and motivated by, promises of immunity, potential defendants prepared and surrendered confessional material, it is clear that material so induced cannot be introduced against them in a criminal trial except in violation of the guarantees of the Fifth Amendment of due process of law and against self-incrimination.

Bram v. *United States*, 168 U. S. 532, 542, 564, holds that a confession induced or engendered by "a suggestion of some benefit [to the maker] as to the crime" is not a voluntary statement and is incompetent because the Fifth Amendment requires that no person shall be compelled in any criminal case to be a witness against himself.

Not only is confessional material induced from the declarant by promising him some benefit obnoxious to the self-crimination ban of the Fifth Amendment, it is also obnoxious to that Amendment's guarantee of due process of law. The Constitutional bar applies regardless of whether the confessional declaration is probably true or probably false. (*Rogers* v. *Richmond*, 365 U. S. 534). And certainly a belief that part of a so-called confession is false does not make it admissible.

Apart from the Constitutional guarantees, common law forbids reception of confessional material induced by promises of immunity because of inherent unreliability of such evidence the confessor often being willing, as here, to confess things he did not do simply to be sure he is not prosecuted.

Until this case, it was conceded by the Treasury that if a citizen disclosed that there were errors and omissions in his tax returns his actions and declarations in so doing could not be used against him even though he utterly failed to cooperate with the Treasury in assessing the tax and frustrated collection.

The processes resorted to in obtaining this Court's 1957 remandment order and in building an asserted new case against petitioners was a defilement of Federal criminal procedures: When the case was first here this Court recognized that either the original evidence that a disclosure had been made considerably prior to June 1948 was a fraud on the courts, or that the showing made here to the effect that a disclosure was not, and could not have been made until some time after June, 1948, was itself the "product of fraud." The two showings were utterly antagonistic. It now has been found that Busby was informed of the facts in early January, 1948, that the disclosure was made "some time" before June 21, 1948 and that the sequence of events that led to and followed the disclosure were as testified to upon the original hearing.

Relevant, exculpatory evidence was suppressed by the prosecutors and withheld from the Court which was induced to delay the case while witnesses were ceaselessly interrogated until their stories fitted into the preconceived suspicion of the Treasury Department. Vital evidence seriously affecting the credibility of the witnesses was suppressed and withheld from this Court. This was an intolerable abuse of decency in criminal law. Prosecutors owe complete candor to the courts they serve and the defendants they prosecute and must disclose exculpatory evidence.

The new hearing disclosed that the original convictions obtained from the jury were tainted by perjury by the prosecution's star witness. The dignity of the United States Government does not permit sentences to be entered on convictions which are founded upon a tainted record.

Both the Grand and Petit Juries were illegal: All of the jurors whose names were put in the jury wheel by the Jury Commissioner actually were selected not through the

exercise of his non-delegable judgment or discretion but that of a wholly unauthorized private person to whom the Commissioner delegated all but the ceremonial functions of his office. The standards of selection used by the Clerk of the Court for selecting his half of the prospective jurors made it impossible for the Clerk to select a fair cross-section of the population. He relied heavily upon volunteers who were incompetent to serve under the law of Illinois. He relied heavily upon a system of nominations by former grand jurors and continued to use as a source of prospective jury members membership lists of selected private organizations including the identical list of a private organization (League of Women Voters) which this Court had said in *Glasser* v. *United States*, 350 U. S. 60 could not be used in the Northern District of Illinois.

On the trial the Court erroneously told the jury to determine petitioner Sullivan's guilt on evidence not admitted against him.

ARGUMENT.

I.

CONFESSIONAL MATERIAL PROCURED FROM A POTENTIAL DEFENDANT BY PROMISING IMMUNITY CANNOT CONSTITUTIONALLY BE USED AGAINST HIM IN A SUBSEQUENT CRIMINAL PROSECUTION.

A. The Nature of the Problem.

Although the Treasury's voluntary disclosure program had its first widespread publicity in the 1940s, it was not then a new program. The term "voluntary disclosure" appears first to have been used in 1919 by then Commissioner of Internal Revenue Daniel C. Roper who, on August 22, 1919, issued a bulletin to all Collectors and Revenue Agents in Charge which was amended September 8, 1919 (R. 3128-9). It stated that if fraud or intentional evasion was discovered by the officers, or if it was disclosed after the Bureau had initiated an investigation, the Bureau would impose maximum civil penalties and institute criminal prosecution. It then said:

> "In cases in which *voluntary disclosure* is made of deficiencies through intentional evasions which if discovered by Internal Revenue officers would be made the basis of criminal prosecution, it will be the policy of the Bureau to impose maximum civil penalties and to consider offers in *compromise of the criminal liability*, instead of instituting prosecution and insisting on jail sentence." (Emphasis supplied.)

The policy was restated by Commissioner Helvering June 27, 1934 to say that where deliberate violation was discovered by the officers or was disclosed by the taxpayer *after* the Bureau had initiated the investigation, "the

criminal liability will in no case *be compromised*," but where taxpayers made voluntary disclosures before investigation had been initiated the Bureau would not recommend criminal prosecution (R. 3130). Various statements of the policy in the 1940s are collected in Appendix B hereto.

The program was not new or novel in the 1940s. It had been followed for many years and the presumption of administrative regularity necessarily attached to it. The successive Commissioners of Internal Revenue and Secretaries of the Treasury can scarcely be deemed to have been acting without authority. The verbiage of both the 1939 and 1934 announcements clearly indicate that the officials believed they were authorized to "compromise" criminal cases as they were authorized to do under Section 3761 of the 1939 Internal Revenue Code (Appendix A) and predecessor statutes.

The motion to dismiss (plea in bar) in this case was held legally insufficient by Judge Barnes on the ground that "uncompleted negotiations for compromise should not be permitted to give rise to an estoppel" (R. 98). This was on the general theory that the immunity could not be enforced unless the written record described in subsection (b) of Section 3761 had been prepared. However, in a solely criminal case and in which no abatement or diminution of the tax was involved the record making requirement is unnecessary. *Willingham* v. *United States*, 5 Cir., 208 Fed. 137; *Rau* v. *United States*, 2 Cir., 260 Fed. 131; *Oliver* v. *United States*, 4 Cir., 267 Fed. 544, decided under Section 3229 of the Revised Statutes, the predecessor of Section 3761 of the Internal Revenue Code of 1939.

The first opinion of the Court of Appeals here held that the immunity was not enforceable because the promise was beyond the authority of the Treasury Department and could be made only by an act of Congress, citing *Whiskey*

Cases, 99 U. S. 594, which merely held that an ordinary prosecutor cannot make binding compromises of miscellaneous criminal cases. The Court of Appeals also cited *United States* v. *Lustig,* 2 Cir., 163 F. 2d 85, for the proposition that the formalities required by Section 3761 must be observed in a purely criminal case. That Court had relied upon *Botany Worchester Mills* v. *United States,* 278 U. S. 282, a *civil* case. The *non sequitur* is apparent. *Willingham, Rau* and *Oliver, supra,* show the error.

Because of the complexity of this record and the unique problems resulting from the unusual posture of this case, we did not pose as a question for certiorari the question of judicial enforcement of solemn promise from highest sources in the Federal Government authorized to "compromise" criminal cases of this variety.

We suggest, however, that the Court may wish to consider the basic moral problem that is raised when the Federal Government takes the position that as a matter of law promises of the highest tax collecting official in the country to the citizens cannot be enforced. The Court, in its discretion, may consider that a proper disposition of this case would be to hold that petitioners' original motion to dismiss stated a complete plea in bar which was good against demurrer; that if the Government wished to controvert the allegations of the motion to dismiss (plea in bar) it should do so and the resulting issue be heard by a separate jury (See n. ....., p. ....., *infra*).

B. Regardless of Whether the Promised Immunity Could Be Enforced, Confessional Material Induced From Petitioners by the Promise Could Not Constitutionally Be Used Against Them.

A fundamental error made by the Courts below was to confuse the question of whether what they regarded as a full and complete voluntary disclosure which would have entitled petitioners to immunity had been made, with the separate question as to whether evidence induced from petitioners by the promises of immunity could be used against them in a criminal trial.

Although the motion to suppress (R. 120 ff.) raised the constitutional question, and both the first opinion of the Court of Appeals and the dissenting opinion of this Court when the case was first here showed its seriousness, neither the second opinion of the District Court nor the second opinion of the Court of Appeals even discuss it.

Out of the welter of confusion engendered by the constantly shifting positions of the prosecution, the following clear and, we think, determinative admission is made by the Government in its Brief in Opposition to the Petition for Certiorari (p. 13) which lays at rest what had been bitterly disputed points:

> "A public offer was made to all taxpayers; and petitioners, who had not even been accused, voluntarily came forward and admitted unreported receipts.
>
> The overreaching here was on the part of petitioners, who wished to avail themselves of the offer of immunity and yet evade, by a new falsification, payment of the taxes which the immunity offer was designed to collect." (Br. in Opp. p. 13.)

The foregoing statement concedes that the offer of immunity was made, that petitioners came forth voluntarily, before start of investigation, that they relied on the offer,

that they wanted to achieve immunity. Whether petitioners should have the immunity is one thing; whether statements and material, true or false, extracted from them by the lure of immunity can be used against them in a criminal trial is another.

The "unreported receipts" referred to in the foregoing quotation is all of the "Recapitulation" shown at page 85 of the Petition for Certiorari, down to the heading "Disbursements", and all of pages 86, 87, 88, 89 and 90. (A typewritten form of this Recapitulation appears at p. 117 of Ex. Vol. I, less legible reproduction of supporting sheets at pages 122-126 of Ex. Vol. I.) The alleged "new falsification" referred to is that portion of the "Recapitulation" below the heading "Disbursements", at p. 85 (of the Petition).

In the foregoing quotation the government is taking two positions, both of which are untenable.

First, it is saying that the constitutional question as to use of confessional material may be answered by taking into consideration the opinion of a court as to the truth or falsity of its contents. This is legally impermissible.

Secondly, this record contains Treasury directives forbidding deduction for tax purposes of the "Disbursements" Section; Sauber testified that he told petitioners nothing would be allowed for over-ceiling disbursements; and uncontradicted testimony of Cain was that it made no difference what the disbursements were because "it isn't going to be allowed anyway" (R. 2586) or, as Cain put in another place:

> "The time that we spent on this was spent in finding how much the maximum income to the Company was, not the outgo. We didn't care what the outgo was because we knew it wasn't going to be allowed to us anyway." (R. 2601.)

There is thus no room to claim that petitioners were endeavoring to "evade payment of the taxes" on the added income by handing in the "Disbursements" portion of "Recap". Indeed, on the new hearing Revenue Agent in Charge Wright agreed that petitioners implored him to give them a bill on whatever basis he believed proper. (App. 1006-1007.) But Wright wanted them to turn informer.

If those making the disclosure on behalf of Shotwell would have disclosed the identity of the recipients of Shotwell's black-market disbursements they might have put the Treasury on the scent of persons who might have failed to report such income. If it be assumed, as the Government contends and petitioners deny, that some of the Lubben money was disbursed as so-called constructive dividends to one or more of the officers of the company the same situation might obtain. There was nothing in the disclosure policy, nor is there anything in the constitutional inhibition against use of confessional material procured by promise of immunity, that compels the discloser or confessor to turn informer on any one whether he be a supplier of goods to the disclosing corporate taxpayer or one of its officers. Essentially it is the failure of petitioners to turn informer that has been held to deny them immunity but that certainly should not make admissible against them confessional material otherwise clearly inadmissible.

When the case was here before the dissenting opinion noted that there might be a question as to how far "good faith" or lack of "good faith" in a disclosure might affect the constitutional inhibition. We know of no American case on the subject, but there is English authority under a disclosure policy virtually identical with that of the American policy which holds that even where the discloser gives misleading information intended to reduce the tax

declaration by a suggestion of some benefit that might accrue to him from making it destroys its true voluntary character; that implied promises, however slight, destroy the voluntary character of confessional material because the law cannot measure the force of the influence used or its effect upon the mind of the declarant; that the Fifth Amendment's guarantee against self-crimination forbids the use of material obtained by promises, direct or implied, of benefits.

2. *Rogers* v. *Richmond*, 365 U. S. 534, did not weigh the problem in the light of the Fifth Amendment's guarantee against self-crimination but tested it in the light of the due process guarantee of the Fourteenth Amendment. Whatever is said in *Rogers* v. *Richmond* with respect to due process in the state courts under the Fourteenth Amendment applies equally to due process in federal courts under the Fifth Amendment's similar guarantee. *Rogers* v. *Richmond* held that the question of admissibility of confessional material in criminal cases must be decided with complete disregard of its probable truth or falsity; that the due process clause forbids involuntary confessional material "not because such confessions are unlikely to be true but because the methods used to extract them offend an underlying principle in the enforcement of our criminal law; that ours is an accusatory and not an inquisitive system—a system in which the State must establish guilt by evidence independently and freely secured." *Lisbena* v. *California*, 314 U. S. 219, 236 and *Blackburn* v. *Alabama*, 361 U. S. 199, 206, stand for the same doctrine.

3. At common law confessions obtained by promises of immunity or benefits excluded because they are "testimonially untrustworthy." As Wigmore puts it (*Wigmore* on *Evidence*, 3rd Ed., par. 822) "• • • a promise of certain pardon when attached to a confession, may conceiv-

ably make a confession, irrespective of its truth, seem more desirable than silence with its contingencies * * *."

4. The principles we have referred to all lead to a common end—that confessional material procured by promises of immunity is inadmissible. Pursuant to them it consistently has been held that where, as the Government concedes here, "the disclosure was timely" (Note 3 to Court of Appeals decision) the documents submitted by the taxpayer could not be used against him, if immunity was refused. (*White* v. *U. S.*, 5 Cir., 194 F. 2d 215 (c. d. 343 U. S. 930); *Biggs* v. *U. S.*, 6 Cir., 246 F. 2d 40; *Monroe* v. *U. S.*, 5 Cir., 215 F. 2d 81; *Lupides* v. *U. S.*, 2 Cir., 215 F. 2d 253; *In re Liebster*, 91 F. Supp. 814. Cf. *State* v. *DeCola*, 33 N. J. 335, 352-3; 164 A. 2d 729.)

The Treasury itself assured Congress that documents submitted in a disclosure made in good faith reliance on the promise of immunity could not be used against the taxpayer even if the disclosure was defective (R. 3109).

It may be observed that the process of obtaining evidence in this obnoxious manner is so inherently vicious that it violates not only the Fifth Amendment's guarantee of due process of law, but the guarantee of the Fourth Amendment against unreasonable searches and seizures which are made by fraud, stealth or trick. (*Exaternal Order* v. *U. S.*, 3 Cir., 57 F. 2d 93, 94; *U. S.* v. *Guerrina*, D. C. Ky., 112 F. Supp. 126; *U. S.* v. *Mitchneck*, D. C. Pa., 2 F. Supp. 225.) We suggest it is manifest that an admission or confession of numerous transactions which in fact did not occur at all, or did not occur in the amounts admitted which is given to fit "exaggerated" claims or accusations made, or that are known will be made, and which, is given to secure the prize of immunity, are admissions which are obtained by stealth or trick if the immunity is denied. Both the Fourth and Fifth Amendments must,

"receive a liberal construction so as to prevent stealthy encroachment upon or 'gradual depreciation' of the rights secured by them, by imperceptible practice of courts or by well-intentioned but mistakenly over-zealous executive officers." *Gouled* v. *United States*, 255 U. S. 298, 304.

The interplay of the foregoing principles on this record is clear: persons whom the average citizen would believe had authority to promise immunity and who actually do control the institution of criminal income tax cases, promised immunity for voluntary disclosures. Petitioners in reliance on them, cooperated in coming forth and disclosing Shotwell as having filed a return which omitted a considerable, but undetermined, amount of gross income. Then, believing that they had achieved immunity, they prepared material which "confessed" to "exaggerated" transactions with Lubben. No business man in his right mind would have done what petitioners did if he did not believe that the possible criminal aspects of the matter had been laid at rest and he was dealing only with a civil liability.

The District Court believed petitioners did not tell the complete truth as to what Shotwell did with some of whatever amount of money was involved and, therefore, applying the touchstone of "truth" or "falsity" to the confessional material, held it could be received because partially false.

The vice of the District Court's theory is even worse than the theory of the lower court in *Rogers* v. *Richmond*. There a confession was admitted on the ground that the offer of benefit extended to get it (exempting the declarant's wife from interrogation) was not sufficient to overcome the probability of *truth* in the confession. But here confessional material was admitted because the trial court thought part of it was *false*.

The District Court finds fault with petitioners because in purporting to account for the total amount of money that Lubben said he had paid Shotwell petitioners did not confess, as the District Court believes they should, that some of this money ultimately went, so he believes, to some of the corporate officers. The District Court says that because of this element of supposed falsity in the material delivered to Internal Revenue after the disclosure, the material is admissible against petitioners for two reasons, (1) the part of it referring to "Receipts", although concededly partially false because keyed to the "exaggerated" claims of what Lubben said he had paid, nevertheless is binding on petitioners as an *admission* (the theory adopted by the Court of Appeals), (2) the portion of the material ("Disbursements") which the District Court believes was falsified to conceal alleged constructive dividends to some of the corporate officers destroys the "good faith" of the statement or confession so that petitioners may not urge the constitutional inhibition against reception in evidence of material obtained by promises of immunity.

The premise for the entire chain of reasoning is that a court may consider the probable truth or falsity, or the degree of truth or falsity, of material induced by promises of immunity, in determining constitutional admissibility. Carried to its end, this pernicious doctrine would result in a holding that an utterly false confession in which a suspect completely confessed to a crime he did not commit in order to obtain immunity, or perhaps to protect some other person, could be received in evidence and used to convict the innocent "confessor". The error in the case at bar is almost as repulsive, for, reduced to essentials, the holding of the District Court and the Court of Appeals is that the material here could be used to convict because it was found to be at least partially false—a doctrine more abhorrent to our traditions is difficult to conceive.

II.

CRIMINAL JUSTICE AND THE PROCESSES OF THIS COURT WERE ABUSED BY INDUCING IT TO DELAY ACTION FOR NEARLY A YEAR AND ULTIMATELY TO REMAND THE CASE BY CONCEALMENT OF THE FACT THAT THE WITNESSES WHOSE AFFIDAVITS WERE FINALLY FILED HAD REPEATEDLY SWORN TO THE CONTRARY OF THEIR AFFIDAVITS WHILE THE CASE WAS BEING INVESTIGATED AND CHANGED THEIR TESTIMONY ONLY AFTER BEING SUBJECTED TO REPEATED INTERROGATIONS, REFRESHER COURSES AND OTHER SOPHISTICATED FORMS OF PRESSURE.

This case presents a course of defilement of law enforcement procedures that violates basic standards of decency:

Sometime in March 1955 officials in the national office of the Internal Revenue Service embraced an ill-founded "suspicion" that the Shotwell disclosure could not have been made until after June 21, 1948. Thereupon, an investigation was opened and from thence until the remanded hearing in December 1958 every scrap of evidence contrary to the Treasury's theory, or that was "glaringly inconsistent" with what was selected for presentation to this Court, was ruthlessly suppressed.

The Motion to Remand in this Court should have been decided on the basis of all relevant facts in the possession of the prosecutors while the Motion was pending, and relevant facts include not merely facts as to what did or did not occur in connection with the disclosure, but facts bearing upon the credibility of the witnesses. The Court was entitled to that treatment; petitioners were entitled to it. Facts and witnesses should have been presented in their true colors.

But quite the contrary occurred. Not only were facts withheld but witnesses were ceaselessly interrogated. If

they did not give the desired answer the first time, they were asked, and asked, and asked until they finally gave an answer that fit the theory. No doubt they ceremoniously were told that all that was desired was the truth. But when a government employee in Lima's situation is pressed repeatedly, for example, as to whether he made and destroyed a revenue agent's *report* and every time he swears he did not, is interrogated all over again, he is bound to decide he ought to change his answer. He did. And Graflund did.

The ultimate and lurid picture presented to this Court in 1957 of an alleged perjurious concoction by petitioners of a disclosure which did not occur at all, was too perfect to be the result of mere unrelated changes in the memories of Huebner, Graflund and Lima. Each material part of the horrendous new story, *insofar as it was revealed to this Court*, dovetailed and mortised neatly with its other parts. The Huebner-Graflund-Lima 1957 story of no disclosure (*so far as revealed to this Court*) was internally consistent and made what this Court found to be "a convincing showing" that cast the "darkest shadow" on the 1952 suppression evidence.

Yet this Court entertained a nagging doubt as to whether so bold and widespread a conspiracy of perjury as the prosecutors claimed—a perjurious construction of an entire series of events spanning a period of nearly six months and involving several people—possibly could have taken place.

The Court recognized the deadly seriousness of the situation, for it opened its opinion by saying,

> **"This case presents an unusual question involving the integrity of a criminal trial in the federal courts."**

manded hearing to force the production of the grand jury testimony of Graflund and Lima.)

Thus came about the showing that at the time the Motion to Remand was being filed in this Court Government counsel in the field had taken, after intensive investigation, voluminous sworn testimony that was utterly antagonistic to the theories being propounded to this Court, but withheld all knowledge of it from the Court.

If we now revert to the dilemma stated in this Court's opinion that either the original 1952 suppression hearing testimony in the District Court was untrue or the 1957 affidavits presented to this Court are the product of fraud, we find that when Judge Nordbye's 1959 opinion, even with its harsh language against petitioners, is analyzed, it (a) excuses Government counsel from subornation of perjury, but (b) does not even touch upon their withholding of exculpatory evidence and their complete lack of candor to the highest Court in the country. (c) Equally important, from petitioner's point of view, is that although Judge Nordbye finds that in his opinion fraud permeated the disclosure, he does not find that a syllable of perjury was given by Busby, Cain or Sauber in their 1952 testimony when they described what had taken place.

It is clear, therefore, that regardless of whether what petitioners said when they made the 1948 disclosure legally constituted a good and valid disclosure, their testimony and description in 1952 of what they had said and done in 1948 was a true description and was true testimony. The first half of the dilemma posed by this Court is therefore clearly answered—the original testimony in the District Court was true.

Petitioners have been the victims of relentless determination by someone in the Treasury to retain a conviction by whatever means from time to time seemed expedient,

and that determination, unfortunately, has swept over and embraced at least some persons in the Justice Department.

Before considering the duties resting upon federal prosecutors, we suggest it may be observed that even in commercial transactions one who has knowledge of material facts inconsistent with the facts he actually stated to another, and wilfully conceals the inconsistent facts, is guilty of fraud. (*Equitable Life Insurance Company v. Halsey, Stuart & Co.*, 312 U. S. 410, 425; American Law Institute, *Restatement of Torts*, Sec. 529 and 551.) Tested even by the rules of commercial morality, the conduct of the prosecutors was fraudulent. Tested by the higher standards that must prevail in the relationship between this Court and the members of its bar, the conduct is even more deplorable.

When the affidavits and representations were presented in 1956 and 1957, the Court had every reason to accept them as a fair portrayal of the facts, as the prosecutors knew them, relevant to the contentions raised. Moreover, since the prosecutors voiced no doubt as to the credibility of the affiants, the Court was entitled to, and undoubtedly did, assume that the prosecutors vouched for the credibility of the affiants. In view of the unusual order which the Motion to Remand requested, the Court was entitled to assume, and undoubtedly did assume, that the affidavits had been impeccably obtained. The Court could not remotely have dreamed that the prosecutors were withholding sworn evidence of the very witnesses they promised to produce which showed the utter falsity of their stories in numerous respects.

The simplest example is the treatment of Graflund's revelation of the black-market facts to Busby in January 1948. As heretofore pointed out, this episode was the cornerstone, or starting place, for the entire history of the disclosure. It was essential for petitioners, when the

liability, which was not the case here, that books and information surrendered in reliance on the promise of immunity must be suppressed.

In *Rex* v. *Barker*, 2 K. B. 281 [1941] one Barker

"was convicted on an indictment charging him and one Robinson, with having conspired to defraud the Crown of taxes due from Robinson. Four years before the indictment and after the Commissioners had made an order on Robinson for the production of books and documents, an inspector, representing the Commissioners of Revenue, in an interview with Barker and Robinson, read them an abstract of a Ministerial statement, from Hansard's Parliamentary Debates, which said in part:

> "'Where the taxpayer takes the initiative and voluntarily discloses the fact of his past frauds and their full extent and is also prepared to facilitate investigation and to furnish full evidence (including not only the business books and records, but also private bank books), as may be required on behalf of the board as to the amount of the correct liability, *the board will not institute criminal proceedings*, but will accept a pecuniary settlement.' (Emphasis supplied.)

"Thereafter appellant and Robinson produced ledgers which had been fraudulently prepared to show that the irregularities in question amounted to £7000. At a later interview two further ledgers were produced, together with working papers, which showed that the earlier ones had been prepared to deceive the authorities and that the full amount was £10,400. Later, a letter was written confessing a greater amount. Defendant claimed that the documents produced after the reading of the statement were inadmissible because their production had resulted from a promise or threat held out by the authorities. The objection was overruled and appellant and Robinson were convicted. On appeal the Court reversed and said at page 384:

"'. . . in the present case the promise or induce-

ment which was implied in this extract from Hansard expressly related to the production of business books and records, and the court is of opinion that if, as a result of a promise, inducement or threat, such books and documents are produced by the person or persons to whom the promise or inducement is held out, or the threat made, those documents stand on precisely the same footing as an oral or a written confession which is brought into existence as the result of such a promise, inducement or threat.

"'The result is that, in the opinion of the court, these vital documents and books, namely, the ledgers and the working papers of the appellant, were wrongly admitted in evidence and in those circumstances the conviction of the appellant cannot stand. The court has not lost sight of the fact that the extract from Hansard in terms refers to taxpayers and not to an accountant, but, having regard to all the circumstances of this case and what took place on December 31, 1937, the court has no doubt that the promise contained in the document was intended to apply and was held out to the appellant just as much as to Robinson.'"

Four basic principles are involved, covered by the *Bram* and *Rogers* cases about to be cited, *Wigmore on Evidence* and the Treasury's uniform admission, until this case, that material extracted from a taxpayer by promising him immunity from prosecution could not be used against him in a subsequent criminal trial. The citations of authority and the reasoning contained in *Bram* and *Rogers* and in *Wigmore* represent such thorough research that there is nothing we can add of genuine legal significance to the discussions therein.

1. *Bram* v. *United States*, 168 U. S. 532, holds that confessional material to be constitutionally admissible must be wholly free and voluntary; that any statement or inducement by which the declarant was influenced to make his

And at the foot of page 242, it stated the inescapable dilemma,

> "It is plain that either the testimony in the District Court was untrue or these affidavits themselves are the product of fraud."

Had it not been for the rule of *Jencks* v. *United States*, 353 U. S. 657, petitioners might have been unable to show that the original evidence that a disclosure had been made was true and that the 1957 claim to this Court was false.

Petitioners faced a formidable task when the case was remanded, for although they knew that the showing made to this Court was untrue and necessarily the product of fraud, establishing that this was so was quite a different matter. From the inception of the remanded proceeding petitioners endeavored to get some kind of a specification of the evidence or a bill of particulars (App. 119-124, 145, 163-203, 263, 264, 294-5, 301-6, 414, 425-8) that would give them an opportunity to prepare for the untrue stories they knew Huebner, Graflund and Lima would have to tell. Those pre-trial efforts were resisted by the prosecutors who, *inter alia*, said:

> "* * * it goes without saying that the Government has no intention of submitting any affidavits before, or any statements made by Mr. Huebner or Mr. Graflund or any other prospective witness prior to trial except as at the hearing the Court may order the Government to turn over such statements." (App. 297.)

Under the *Jencks* rule the prosecutors were required to deliver Huebner's statements, or memoranda of statements he had made, when he took the stand. There were seven of these and they totalled 74 pages. (App. 555.) Digesting this mass of conflicting material while the hearings were proceeding was difficult, and counsel for petitioners doubtless did not do as thorough a job as would be desirable. However, it provided a toehold and from it Huebner was

badly impeached in the opening stages of his cross-examination.

Counsel for petitioners knew from the "Chronology" attached to the Brief for the United States when the case was first here that Huebner had testified before the grand jury sometime between August 21 and August 30, 1956. His testimony in chief on the remanded hearing was impeached in the beginning of his cross-examination by statements he had given both *before* and *after* August 21-30, 1956. On that showing petitioners moved for production of Huebner's testimony before the grand jury to see what he had sworn to on the same subject in the interval. (App. 829; Cf. *Pittsburgh Plate Glass Co.* v. *United States*, 360 U. S. 395 and Criminal Rule 6 (e).) Government counsel apparently had believed they could conceal the sworn testimony before the grand jury, for Mr. Russo confessed he "had not anticipated counsel's request for the grand jury minutes." (App. 834.)

This request for the minutes was made shortly before a noon recess, and although the District Court's opinion contains a finding that the Government voluntarily turned the minutes over, the finding is, to say the least, a generous one. The fact is that when the motion for production was made, Government counsel asked that they have over the noon recess to prepare a response. (App. 834.) Only when court resumed in the afternoon and counsel for petitioners had a stack of law books on the table showing their right under the circumstances of the case to the minutes, did Government counsel yield. The minutes were withheld until the close of that session, at which time the three lengthy volumes of Huebner's testimony were turned over to counsel for the defendants. (App. 891.)

(With the precedent set in obtaining Huebner's grand jury testimony, it was relatively easy later on in the re-

disclosure was called into question, to establish that Graflund *did* reveal the blackmarket facts to Busby, else petitioners' entire 1952 narration of the disclosure events was without starting point, reason or motive. It was essential for the prosecutors, if they wish to destroy petitioners, to destroy the January 1948 revelation of Graflund to Busby. Graflund was repeatedly interviewed in 1956, and he told in natural, convincing fashion and in normal language, how he had revealed the facts to Busby in January and "hadn't spared the horses" in doing it. He swore under oath repeatedly to the new grand jury how and why he had done it.

Yet, with all of that evidence in their possession, the prosecutors finally got a recantation out of Graflund and presented this Court with an affidavit which said the January revelation had *not* taken place; that Busby was startled to learn of the black-market transactions in late June 1948. We think it goes without saying that decency in federal law enforcement forbids prosecutors to use court procedures to hold criminal cases in abeyance while for months they interrogate and re-interrogate a witness until he recants the truth and tells a lie. Certainly, the Court was entitled to know that the affidavit was a recantation of previously given solemn statements and sworn testimony to a federal grand jury.

There is little that an ordinary member of the bar feels either the necessity, or the freedom, of saying, to this Court about the requirements of decency in federal criminal procedures, the requisite of complete integrity, or the duties of prosecutors to see that justice is done. *Berger* v. *United States*, 295 U. S. 78, *Communist Party* v. *Subversive Activities Control Board*, 351 U. S. 115, *Mesarosh* v. *United States*, 352 U. S. 1, *McNabb* v. *United States*, 318 U. S. 332, do not need adornment by us. In *McNabb* a prisoner was held for a few hours until local arresting officers got

all the "discrepancies" in his stories straightened out. In *Shotwell* the Court was induced to hold the case for upwards of a year until all the "discrepancies" in a new and false story were straightened out.

With respect to the duty of a prosecutor to disclose exculpatory or explanatory evidence, or evidence which bears materially on the credibility of a witness, the holding in *United States* v. *Zborowski* (2 Cir.), 271 F. 2d 661, 668 is squarely in point. There it was held that a trial prosecutor should have disclosed to the defendant on trial that a prosecution witness had given contrary grand jury testimony. The Court of Appeals for the Second Circuit said,

> "Our standards of fair play in federal criminal proceedings require that the government should present its evidence in its true colors and that it should never be a party to withholding any evidence which materially bears on the credibility of a witness it places on the stand."

Here the same kind of evidence, grand jury testimony, which the trial Court here found contained "glaring inconsistencies and contradictions" (App. 1768-69), was withheld from this Court in one of the most delicate and unusual criminal proceedings it had ever had presented to it. The affidavits here were not presented in their true colors. The withheld evidence destroyed the credibility of the witness Graflund on the crucial point in the entire maneuver and, of course, the withheld evidence destroyed numerous points throughout the new stories of the three witnesses.

Many authorities are collected in 60 Col. L. Rev. 858, "The Duty of the Prosecutor to Disclose Exculpatory Evidence"; see also *People* v. *Savvides*, 1 N. Y. 2d 554, 136 N. E. 2d 853, cited with approval in *Napue* v. *Ill.*, 360 U. S. 264; *Curran* v. *Delaware*, 3 Cir., 259 F. 2d 707, 713;

U. S. v. *Consolidated Laundries Corp.*, 291 F.2d 563, *1961 Trade Cases*, Par. 70,039.

It is respectfully submitted that both this Court, entitled to the highest degree of candor from public prosecutors, and petitioners have been outrageously abused.

It is also submitted that this record displays gross abuses of federal criminal processes. This point should be so disposed of by this Court that nothing like this can ever occur again for "life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from actual criminals themselves." (*Spano* v. *New York*, 360 U. S. 315, 324.)

III.

A NEW TRIAL SHOULD BE GRANTED BECAUSE THE GOVERNMENT'S NEW PROOF DISCLOSED THAT THE ORIGINAL CONVICTIONS WERE SECURED ON FALSE TESTIMONY.

Judge Nordbye, on remand, found that it was "entirely probable" that Lubben, the Government's star witness before the jury, "exaggerated" his testimony, *i.e.*, he "misrepresented on the side of greater size, extent, value, etc.; [he] overstated the truth." (*Webster's New International Dictionary*, 2d Ed., Unab.) The proper legal term is perjury.

In their Brief to the Court of Appeals on the first appeal the Government said (p. 17) "The primary direct evidence as to most of the receipts was the testimony of Lubben himself". At p. 57 it frankly admitted "Lubben's direct testimony as to the payments" was one of two main arches upon which "the structure of the Government's case rests. * * *"

At p. 33: "The jury obviously believed Lubben." Lubben's testimony not only was what swung the trial jury, it convinced Judge Nordbye. (R. 3017-8, 3073.)

Judge Nordbye on remand has found that Lubben's testimony on which the jury convictions depended was seriously false. There was no more important issue before the jury than that as to the gross amount of Lubben's payments, because unless defendants could establish that they had expended a like amount for raw materials, they were bound to be convicted.

On the jury trial the Government contended that Lubben's testimony (and books) proved a total of $454,000 (R. 1837-50). Because, *as now found*, that figure was seriously "exaggerated" defendants could not possibly show they spent that much for raw materials. On the remanded hearing Government witness Huebner flatly said that Lubben had "lied on the stand" when before the jury (App. 809); that Lubben lied when he testified he paid Graflund some $49,000 (App. 809); that one item (chocolate covered nuts) on which Lubben claimed he had paid $40,000 in "overages" had borne no "overages" at all. The new evidence, taking everything Huebner testified to at face value, is that Lubben paid only $234,000. That was the figure asserted by the prosecutors on remand. That is $220,000 less than what Lubben told the trial jury.

It was established, without contradiction on the new hearing, that Lubben's purported records which went to the jury had been "doctored" (App. 969) by one Tobias, who subsequently became a Treasury employee and made the admission while on the Treasury payroll. Tobias was not called to deny this admission. In at least one instance the doctoring was so crudely done that Lubben's Cash Disbursement book (p. 29 of Government Trial Ex. 7) recording a disbursement of $4200 paid to "General Commercial Association," was later altered in another hand by having the word "Shotwell" written across it. Yet these doctored so-called "records" went to the jury in 1953 vouched for by the United States as true. The prosecutor at that time,

and so far as we know in good faith, vouched to the jury as follows:

> "I will tell you who David Lubben is. He is an honest, honorable American citizen. * * * Dave Lubben is telling the truth." (R. 2937.)
>
> "What you have seen are the [Lubben] records which were kept by competent, honest people * * *." (R. 2879.)

Thus the United States in 1953 unfortunately vouched for a vicious falsifier and for false records.

Judge Nordbye found it was "entirely probable that Lubben exaggerated his testimony when before the jury" (App. 1758); that the probable amount which Lubben had paid, including $28,000 in the year 1944 which was not involved in the jury trial, was "between three and four hundred thousand dollars" (App. 1758). This means, even on the District Court's figures, that Lubben lied to the jury to the extent of at least $132,000—we think much more (Our computation of $132,000 is arrived at as follows: $454,000—($350,000—$28,000)=$132,000.)

It is manifest that the jury verdicts are "tainted" by "tainted" evidence. We are aware that on the Petition for Certiorari herein and the Brief in Opposition a dispute developed as to the precise amount of the variation between Huebner's testimony, Lubben's fantastic exaggerations and between both of them and the truth. Whether the amount of Lubben's perjury was $132,000, which is the figure that results from the District Court's findings, or $250,000, or $100,000, is largely immaterial, for in any event his exaggeration was so gross as to constitute willful perjury and gross deception.

In 1953 the District Court described Lubben as "honest" and "faithful" and found that *"twelve jurors believed he told the truth"* (R. 3073). In 1959 he no longer could find that Lubben had been honest but perhaps "mistaken";

he found Lubben had "exaggerated".[19] We suggest that verbiage is a mere euphemism for perjury; *in any event it is a finding that the jury was grossly misled by seriously false and vital testimony.* In this respect this case is the precise reverse of *U. S. v. Johnson*, 327 U. S. 106, referred to by the Court of Appeals, in which the trial court found that the Government's star witness had told the truth to the jury. It is a monstrous perversion of due process and rational logic to say that the Government may open a case up, prove that its star witness deceived a jury and yet insist that the question of credibility was for the jury which never had the benefit of the evidence which proved how it had been deceived.

We suggest that the Court of Appeals' holding that unless there be a formal finding of technical perjury, a federal judge may enter sentences on jury verdicts which he has found to be based on outrageously false testimony which the jury nevertheless accepted as true, is destructive of the standards of decency in criminal law enforcement this Court has always insisted on. The holding is especially incongruous coming in a case in which this Court was deeply concerned with the integrity of federal criminal processes.

The Court of Appeals' holding that there must be a specific finding of technical perjury is legally immaterial under the doctrine of this Court in *Mesarosh* v. *U. S.*, 352 U. S. 1. *Mesarosh* stands for the proposition that a conviction resting upon the testimony of a proven falsifier cannot

19. Since 1953 Lubben has been well documented as a congenital perjurer and swindler. The United States Attorney for the Southern District of New York describes him as "a perjurer and a black-marketeer and practically anything else you want to talk about" (R. 2589 of *Giglio* v. *U. S.*, 355 U. S. 339). *In re Carlsen*, 17 N. J. 338, 111 A. 2d 393, shows him in a distillery swindle in Puerto Rico in 1951. *State* v. *Weleck*, 34 N. J. Super. 267, 112 A. 2d 23, 25, again proves his penchant for perjury.

stand. In that case, when it was suggested that the Government's star witness had given false testimony before other tribunals, but which the Solicitor General was not prepared to say constituted legal perjury because possibly caused by a psychiatric condition of the witness, this Court granted a new trial, saying (352 U. S. at p. 9):

> "The question of whether his [Mazzei's] untruthfulness in these other proceedings constituted perjury, or was caused by a psychiatric condition, can make no material difference here. Whichever explanation might be found to be correct in this regard, Mazzei's credibility has been wholly discredited by the disclosures of the Solicitor General. No other conclusion is possible. The dignity of the United States Government will not permit the conviction of any person on tainted testimony. This conviction is tainted and there can be no other just result than to accord petitioners a new trial."

At p. 14 this Court said:

> "Mazzei, by his testimony, has poisoned the water in this reservoir, and the reservoir cannot be cleansed without first draining it of all impurity. This is a federal criminal case, and this Court has supervisory jurisdiction over the proceedings of the federal courts. If it has any duty to perform in this regard it is to see that the waters of justice are not polluted. Pollution having taken place here, the condition should be remedied at the earliest opportunity."

In *Mesarosh* the Solicitor General, on the basis of false testimony *in other cases*, thought there was a possibility of false testimony in the criminal proceeding. Here we have a judicial finding of *false testimony in the criminal case itself.*

To paraphrase this Court in the *Mesarosh* case, these petitioners were convicted by the tainted testimony of Lubben; the pollution caused by the tainted testimony can be cleansed only by granting a new trial.

In *Communist Party* v. *Subversive Activities Control Board*, 351 U. S. 115, this Court said at p. 124:

> "When an uncontested challenge is made that a finding of subversive design was in part the product of three perjurious witnesses it does not remove the taint for a reviewing court to find there was ample innocent testimony to support the Board's findings."

In both, *Mesarosh* and *Communist Party*, this Court cited *McNabb* v. *U. S.*, 318 U. S. 332, where the Court said (p. 340), "Judicial supervision of the administration of criminal justice in the Federal courts implies the duty of establishing and maintaining civilized standards of procedure and evidence."

This Court has held it to be a denial of due process for a state to obtain a conviction by the knowing use of perjury. *Mooney* v. *Holohan*, 294 U. S. 103. In *Napue* v. *Illinois*, 360 U. S. 264, 269, it said, "The same result obtains, when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." False evidence here appeared before sentencing. The record should have been cleansed of that impurity before a jury which heard truth, not lies.

The District Court applied a double standard. He resentenced petitioners, although he did not find that they had committed any perjury in the first disclosure hearing, but ignored the fact that the evidence to sustain the conviction rests on the testimony of a witness he found to be a falsifier.

IV.

BOTH THE GRAND AND PETIT JURIES WERE ILLEGALLY SELECTED. PETITIONERS CAN RAISE THE POINTS.

A.

The Questions as to the Juries Are of National Importance.

There scarcely has been a time when it was more important than now that federal jurors be selected only by officials lawfully commissioned to do so and that methods of selection be calculated to produce a true cross-section of the population and to preclude interested persons from procuring jury service. As the federal government has moved into fields directly affecting the daily lives of all citizens and in which important rights will be determined by juries, jury selection procedures have become increasingly important.

The jury system will fail if strangers to the courts are permitted to select and to reject prospective jurors, or if the method of selection, even if used by proper officials, is not designed to secure a cross-section of the population but to secure whatever the selector may believe to be "good" jurors and to encourage "volunteers" to infiltrate themselves into jury service. And certainly the system will disintegrate if commands of this Court to end abuses are disobeyed. These evils all appear without dispute in this record.

The gross abuses in the Northern District of Illinois exposed by this record in the summer of 1957 produced a reformation by unanimous action of all the District Judges early in 1958. Jurors now are selected from voting lists, "volunteering" is not permitted, and there is a new Jury Commissioner who presumably is performing his functions (App. 150). However, the District Court and the

Court of Appeals, on grounds which we submit are without merit, *i.e.*, failure to show so-called actual prejudice, have refused to apply the proper remedy in the very case which showed the necessity of reform.[20] The instant opinion of the Court of Appeals gives encouragement to those who might wish to manipulate jury membership. This case presents an opportunity to make clear to jury selection officials (and to Courts of Appeal) throughout the nation what their duties are.

B.

The Jury Commissioner Wholly Abandoned and Delegated His Duty of Selection.

The law is explicit that the duties of the Clerk (or a deputy clerk) and the Jury Commissioner "may not be delegated." (*Glasser* v. *United States*, 315 U. S. 60, 85; *United States* v. *Murphy*, 224 F. 554, D. C. N. Y.; *In re Petition for Special Grand Jury*, 50 F. 2d 973, D. C. Pa.) The proper stringency of that rule is demonstrated by *Dunn* v. *United States*, 5 Cir., 238 F. 508, in which, at a time when the statute authorized only the Clerk and the Jury Commissioner to select jurors, a deputy clerk had in fact performed the Clerk's functions. Solely because of the delegation of the Clerk's functions a conviction was set aside. It was necessary to have the statute amended to its present form which permits a deputy clerk to exercise the duty of selec-

20. As shown in our Statement (p. 55, *infra*), the facts were first developed in June 1957 on motions to dismiss the new indictment brought against petitioners. Judge Barnes said he did "not enjoy listening to a challenge to the array. There is nothing interesting about that." (S. 274) and overruled the challenge (S. 275). Petitioners endeavored to secure review in that case by means of mandamus. (The S .... volume of the record here is actually the Appendix in support of that mandamus petition.) The writ was denied by the Court of Appeals without prejudice to the rights of petitioners to raise the matter on appeal in the event they are tried and convicted in that case which has not yet been brought to trial.

tion in large districts (See *House Rep. No. 1322*, 64th Cong., 2nd Sess.). The rule that federal jury selection officials may not delegate their duties of judgment and selection is not unique. It is the rule followed almost uniformly in the states.[21]

As our "Statement" shows, and as we shall further show herein, the Jury Commissioner in the Northern District of Illinois abandoned all but the ceremonial functions of his office; he delegated the exercise of judgment as to selection and rejection of prospective jurors to an unknown employee of a private corporation of which the Commissioner was the head. If delegation to court officials is bad (*Dunn* v. *United States*, *supra*), delegation to an unknown private hireling certainly must be more obnoxious.

The District Court overruled petitioners' objection with a finding that "Mr. Crooks [the Jury Commissioner] was the official who made the decision as to the names that should be sent in to the Clerk of Court as prospective jurors, although he delegated many of the ministerial duties to Jongsma" (App. 438). In the Court of Appeals petitioners charged there was no evidence to support that finding and challenged the Government to show any that would support it. The Government, because it could not meet it, ignored the challenge. The Court of Appeals, al-

21. *State* v. *McGee*, 80 Conn. 614, 69 A. 1059; *State ex rel. Jackson* v. *Jordan*, 101 Fl. 616, 135 So. 138; *People* v. *Boston*, 309 Ill. 77, 139 N. E. 880; *Flatter* v. *State*, 182 Ind. 514, 107 N. E. 9; *Stipp* v. *State*, 187 Ind. 211, 118 N. E. 818; *Wilson* v. *Commonwealth*, 287 Ky. 286, 152 S. W. 2d 952; *State* v. *Newhouse*, 29 La. Ann. 828; *State* v. *McNay*, 100 Md. 622, 60 A. 273; *People* v. *Tonnelier*, 167 Mich. 638, 133 N. W. 510; *Fornia* v. *Frazier*, 140 Mich. 631, 104 N. W. 447; *State* v. *Rouner*, 333 Mo. 1236, 64 S. W. 2d 916; *State* v. *Johnny*, 29 Nev. 203; 87 Pac. 3; *Hulse* v. *the State*, 35 Ohio St. 421; *Donaldson* v. *State*, 73 O. Cr. 41, 117 P. 2d 555; *Gay* v. *City of Eugene* (1909), 53 Ore. 289, 100 Pac. 306; *Klemmer* v. *Mt. Penn Gravity Ry. Co.*, 163 Pa. 521, 30 A. 274, 277; *State* v. *Muldoon*, 67 R. I. 80, 20 A. 2d 687; *Irvin* v. *State*, 57 Cr. Tex. 331, 123 S. W. 127.

though aware of the contention as to the Jury Commissioner's delegation of his duties (S. 298), failed to discuss it.

In the Petition for Certiorari petitioners asserted that the Solicitor General would "be unable to cite any substantial evidence showing that Commissioner Crooks selected a single one of the jurors theoretically selected by him" (Pet., p. 33). The Brief in Opposition failed to cite any such evidence. Nor will the brief in answer to this one refer to any. The finding that Commissioner Crooks delegated only ministerial duties is contrary to the record, which conclusively demonstrates that only Richard Jongsma exercised the judgment of selection or rejection, while the Commissioner performed only the ministerial task of dropping the names selected by Jongsma into the wheel. The matter is so grossly aggravated that further exploration of the record beyond the material in our "Statement" is illuminative:

The examination of Jury Commissioner Crooks occurred in June 1957 before the late Judge John P. Barnes, then senior Judge in the Northern District of Illinois, in the related case (see Note 20 and p. 5, fl., *infra*). Crooks' testimony loses color in cold print, which, although showing he could not answer the simplest questions and had to call on his assistant, Richard, to do so, fails to show that Richard was sitting half way across the large courtroom and that the Commissioner was shouting across the head of examining counsel to learn what he should say. It is a matter of choice which passage most completely exposed Mr. Crooks' abandonment of duty, but the following, occurring after it had been established that, after obtaining names of prospective jurors and before making final selections, Richard sent questionnaires to the prospects bearing upon their qualifications, is typical:

"Q. Did you [Crooks] read personally the ques-

tionnaires of the individuals [on the 1956 grand jury] whose names I gave you with respect to their answers to that question?

"A. I couldn't say so. I don't think so.

"Q. Can you say that you personally read any of the questionnaires, Mr. Crooks?

"A. Yes, sure.

"Q. Of the individuals whose names I gave to you?

"A. No. (Addressing Mr. Jongsma.) Maybe you read them, Richard.

"By Jongsma: Absolutely. I read them all." (S. 233.)

A few lines later:

"Q. You don't read, yourself, all of them [the questionnaires]?

"A. No.

"Q. You delegate that to Richard?

"A. What do you expect for nothing?

"Q. Please answer my question.

"A. I am answering you" (S. 233).

Again:

"Q. In selecting names for potential or prospective jurors—and I will confine this to the years 1952, '3, '4, '5 and up to the 15th of March of 1956—did you during that time send any letters to the postmasters requesting them to furnish you with names?

"Please don't look at your assistant.

"By the Witness: Well, he knows, and *I* don't know.

"Q. So you don't know whether names came about or whether that process was used in getting names for the juries?

"A. I couldn't tell you.

"Q. For which you have assumed responsibility?

"A. I can't tell you. Richard could tell you. Richard is on my payroll. I pay him. The Government pays me nothing, for twenty years, and I am just about fed up. I will give it to somebody else.

"Q. Mr. Crooks, is it fair to say that Richard does the work and gets the names, and you pay Richard?

"A. That's right.
"Q. Is that right?
"A. That's right.
"Q. And that Richard knows where these names come from and gets them, and you don't, is that correct?
"A. That's right.
"Q. And you have delegated the work of your office in large part to Richard?
"A. That's right, and he is very capable" (S. 235 6).[22]

Subsequently Richard Jongsma was examined before Judge Nordbye and admitted that *he*, and *not the Commissioner, made the determinations* as to whom to select and whom to reject after reading answers to the questionnaires (see p. 58, *infra*).

It is obvious that the District Court's finding that the Commissioner delegated only ministerial duties is contrary to the undisputed record and cannot stand. Crooks put it accurately, shamlessly and tersely when he admitted

"He [Richard] does all the work, and I take all the honor if there is any." (S. 229.)

The record demonstrates that every supposed selectee of the Commissioner that sat on these juries actually was selected by Richard Jongsma and not by the Jury Commissioner (App. 338-339). Translated into numbers this means that 13 members (56%) of the grand jury and 5 members (41% excluding alternates) of the petit jury were selected wholly outside the law.

A Jury Commissioner's function of selection and rejection is one of delicate importance. A Jury Commissioner is selected because it is believed he has the ability to exercise careful judgment responsibly. It never has been held

22. Richard did in fact circularize postmasters by a form letter over Crooks' signature which in substance called for people to volunteer to their local postmaster for service (App. 139-141).

heretofore, and never should be, that such fateful responsibility may be delegated.

The delegation point requires voiding of the indictments and convictions unless the Government is correct in its position that petitioners have waived their right to urge the point. Waiver will be discussed under subheading D below.

The Court of Appeals took the position that it was incumbent upon petitioners to show they were "actually prejudiced" by the various defects in jury selection procedures (S. 298-299). If by "actual prejudice" the Court of Appeals meant that petitioners failed to show that some individual with personal animus against them sat on one of the juries, it is conceded that no such showing was made; nor is such ever necessary. On the other hand, if by "actual prejudice" is meant a showing that the particular juries were heavily loaded with *de facto* members who had been selected by a total stranger to the jury system (or who were incompetent under the law of Illinois), then a showing of "actual prejudice" was made to the hilt.

Where a method of selection has been used which cannot be sanctioned by this Court, "it becomes unnecessary to determine whether the petitioner was in any way prejudiced by the wrongful exclusion" (*Thiel* v. *Southern Pac. Co.*, 328 U. S. 217, 225). In that case wage earners who were paid by the day were excluded from the jury list. Because the process of selection was wrong, this Court held it was unnecessary to go into the question of so-called "actual prejudice." The matter is settled by *Ballard* v. *United States*, 329 U. S. 187, 195, holding:

> "But reversible error does not depend on a showing of prejudice in an individual case. * * * The injury is not limited to the defendant—there is injury to the jury system, to the law as an institution, to the com-

munity at large, and to the democratic ideal reflected in the processes of our courts."

Unless inroads are to be made into *Ballard* this case must be reversed.

C.

Volunteers Were Permitted To Serve On the Jury. This Was Illegal Under the Statute In Effect As It Pertained to the State of Illinois Until 1958 and Should Be Illegal As to All Federal Juries.

The tabulations of the juries (Appendix D hereto) show they were heavily infiltrated with "volunteers". Nine members of the grand jury (39%), possibly ten (43%), were such volunteers.

Under the federal statute in effect when these jurors were selected, each juror had to fulfill the requirements of the federal statute and could not be incompetent under the law of Illinois (28 U. S. C., 1952 Ed., Sec. 1861). Volunteers were incompetent under Section 13, Chapter 48, *Illinois Revised Statutes* of 1951 and, therefore, were incompetent as federal jurors. There is no doubt about this point. Once again therefore, both the grand and petit juries were illegal and the indictment and the convictions must be voided unless petitioners have waived their rights to object.

The practice of accepting volunteers is, and should be, generally recognized as wrongful. We append a note showing that under the statutes of at least twenty-six states volunteers are incompetent as jurors. In many states the mere act of unsuccessful volunteering is an offense punishable either as a special contempt of court, a misde-

meanor, or a felony.[23] The solid reasons behind those statutes are evident. A person supposedly may seek jury service to influence the result for or against a particular litigant; he may seek service because he has some particular social philosophy he wishes to forward. Whether that philosophy be in favor of the Government or in favor of persons accused of crime, in favor of plaintiffs, or in favor of defendants, is immaterial.

There are many people, or groups of people, who hold strong opinions as to the desirability or undesirability of various federal laws. If the door is opened for such groups

23. Typical of these statutes is that of Colorado which provides that any person who shall do any act for the purpose of procuring his own name or the name of any person to be placed upon the jury list except as provided by the statute shall be guilty of a misdemeanor punishable by a fine of $10.00 to $1,000.00 or not more than 1 year or both. The act further provides that if any jury commissioner or other official shall place any name on the jury list at the request or solicitation of any person he shall be guilty of a felony punishable by a penitentiary sentence of from 1 to 3 years. Colo. Rev. Stats. (1953) Chap. 78, Art. 3, Sec. 78-3-11, 12. Cf. *Code of Alabama*, Title 30, Sec. 41, Par. 50; *Arkansas Stats.* (1947) Sec. 41, Par. 2809; *Iowa Code Ann.* Vol. 40 Sec. 609.2(8), 609.46; *Burns Indiana Stats.* 4-3304, 9-1501; *Illinois Rev. Stats.* (1951) Chap. 78, Sec. 13; *Kansas Gen. Stats.* (1949) Chap. 43, Art. 1, Sec. 102, 127; *Kentucky Rev. Stats.* Sec. 29.380, 29.990; *Ann. Laws of Massachusetts* Vol. 8A, Chap. 234 Sec. 37, 38; *Michigan Stats.* Ann. Vol 20, Chap. 266, Sec. 27.246, 27.277; *Minnesota Stats.* Ann. Chap. 628, Sec. 43; Chap. 593, Sec. 05; *Vernon's Ann. Missouri Stats.* Chap. 494, Sec. 494.070, 494.180; *Rev. Stats. Nebraska* (1943—reissue of 1956) Art. 16, Sec. 25-16; *Nevada Rev. Stats.* Chap. 199, Sec. 199.060; *New Mexico Stats. Ann.* 1953 Vol. 4, Chap. 19, Sec. 19-1-11, 19-1-12, 19-1-5; *New Jersey Stats. Ann.* Title 2A Sec. 2A; 72-8; *New Hampshire Rev. Stats.* Ann. Chap. 500, Sec. 500:22; Pages Rev. *Ohio Code Ann.* Title XXIII Sec. 2313.27, 2313.99; *Oregon Rev. Stats.* Chap. 10, Sec. 10.080(1) (2), 10.990; *Purdon's Pennsylvania Stats.* Ann. Title 17 Chap. 11, Sec. 1290; *General Laws of Rhode Island* (1956) Title 9, Sec. 9-10-6; *South Dakota Code* (1939) Chap. 13.12 Sec. 13.1209, 1210; *Tennessee Code Ann.* Title 39, Chap. 8, Sec. 39-808, Title 22, Chap. 2 Sec. 22-216; *Utah Code Ann.* (1953) Title 78, Chap. 46 Sec. 78-46-16, 78-46-15; *Code of Virginia* (1950) Title 8, Chap. 11, Sec. 8-176, 8-203; *West Virginia Code* (1961) Chap. 52 Sec. 5264, 5285; *West's Wisconsin Stats. Ann.* Chap. 255, Sec. 255.03(2), 255.031.

to infiltrate themselves onto federal juries, dispassionate consideration of cases by a true cross-section of the population is frustrated and the jury list is laid open for infiltration by pressure groups.

It may be noted that one of the lists of volunteers which was used here was a list of "ladies [who] are all very civic minded" (S. 160). It may be doubted that a jury infiltrated by "very civic minded" ladies would give wholly dispassionate consideration to an asserted case of tax evasion or that such a jury would give dispassionate consideration to a case in which a prosecutor charged some unfortunate citizen with possible violation of the Mann Act. Moreover, "very civic minded" means different things to different people—to some it means insistence on state's rights, to others it means subordination of state doctrines in fields in which the federal government has legislated; to some it means insistence on orthodox religious tenets, to others anything smacking of obscenity is necessarily "un-civic."

Reference to Appendix D hereto will show that 9 members, or 39%, possibly 10 members, or 43% of this grand jury were volunteers. It is obvious that such a jury could not possibly represent a true cross-section of the population for it is a notorious fact that 39% of the population does not volunteer to serve on juries. On the contrary, courts have trouble getting jurors. By the very act of volunteering the volunteers remove themselves from a normal cross-section. A jury, 39% of which sought the position, obviously is far from a cross-section of the population.

Theoretically, under the federal jury statute in effect in 1952 and 1953 federal courts were protected against volunteers in at least 26 of the states because federal jury selection officials were bound by state, as well as federal

statutes as to competency of jurors. That no longer is the case. There is now no statute binding on federal jury selection officials which by express terms precludes acceptance of volunteers on federal juries. (28 U. S. C. A. Sec. 1861.) If the evil of volunteers is to be curbed or stamped out that must be accomplished by action of this Court.

In the case at bar several of the jurors suffer double incompetencies, that is, they were selected by Jongsma, a wholly unauthorized person and thus were incompetent *and* were also volunteers and were statutorily incompetent under the law of Illinois. In the case of selections by the Clerk, it will be found that some bore double incompetencies of being taken both from the private membership list of a private club and having authorized (volunteered) use of that list as a source of jurors. Thus the percentages we give as to the percentage of membership of one or the other of the juries who were incompetent are both cumulative and to a degree are duplicative.

D.

The Clerk of the Court Used No Method Designed to Secure a Cross-Section of the Population But Relied Almost Entirely Upon Selection of Names From Lists of Private Organizations and Upon Nominations of Former Jurors, Largely Grand Jurors.

When one turns to the method of selection used by the Clerk of the Court for his half of the names which went into the wheel, one comes to the startling fact that approximately 70 to 75% of the Clerk's selections were made, according to his estimate, directly or indirectly from membership lists of private organizations (S. 182). Even if the Clerk's estimate be not wholly precise, the percentage necessarily is so high as to show shocking disregard of this Court's command to the Northern District of Illinois

in *Glasser* v. *United States*, 315 U. S. 60, that membership lists of private organizations not be used as a source of prospective jurors' names.[24]

Most of the balance of the Clerk's selections were nominees of former jurors, largely grand jurors. These nominees in many instances suffered the further disability of being volunteers who had been contacted by former grand jurors or club members and had offered to serve. (See, for example, Mrs. Schaefer's letter at S. 160, or the "Blue Ribbon Group" at S. 191-192.)

The reflection of these improprieties in the instant grand jury was that 2 of the Clerk's selections were volunteers, 6 were nominees of former grand jurors, 1 was the nominee of a former petit juror, and 1 was perhaps a volunteer (App. D hereto). On the petit jury 2 members were taken from private organization membership lists, 5 were recommended by former jurors, and 1 was recommended by an unknown individual. Perhaps the most amazing thing is that the identical membership list (that of the Illinois League of Women Voters), use of which this Court condemned in *Glasser*, was used despite and after *Glasser;* one of the petit jurors who convicted petitioners came from that condemned list (App. D hereto).

The grand jury furnishes a clear example of the inbreed-

24. The record indicates that the Clerk resorted to the membership rosters of the organizations set forth in this note. We believe this list to be complete, or nearly so. The titles of the organizations demonstrate that the Clerk was reaching for members of the allegedly "better" element of society, whereas juries are supposed to be composed of rich and poor, saints and mild sinners alike. The Clerk's list follows: Bryn Mawr Women's Club, S. 141; South Shore Y.M.C.A., S. 141; League of Women Voters, S. 134; St. Killian Altar and Rosary Society, S. 132; Women's Club of Evanston, S. 145; Catholic Women's League, S. 149; South Shore Temple, S. 148; Parent-Teachers Association, S. 181; Friends of Drama, S. 150; Auburn Park Lions Club, S. 151; Mount Carmel High School Parents of Students, S. 152; Lawmen's League of the North Side Christian Church, S. 166.

ing or self-perpetuation that was bound to result from the methods employed by the Clerk: Six members (26%) were nominees of former grand jurors. Persons being investigated or tried for crime are entitled to have their fates settled by a true cross-section of the population and not by nominees of former grand jurors who have made their nominations after they have had a month's indoctrination by prosecutors. Grand jurors receive a one-sided experience in criminal law. For a month or more they learn the problems of prosecutors. Their experience unleavened by the moderating teachings or examples of a judge or by the contrary views of lawyers representing defendants. It is highly likely that if grand jurors have become interested enough in criminal law enforcement to make nominations of succeeding grand jurors, they have become sympathetic to the problems of prosecutors and will tend to nominate persons they believe may share that sympathy. Certainly the system of self-perpetuation, when carried to the extreme to which it was carried in the Northern District of Illinois, together with extreme reliance on the membership rosters of private clubs cannot produce, and is anathema to, selection of a true cross-section of the population.

So far as the use of the membership lists of private organizations as a source of names is concerned, there is little that need be said. This Court in *Glasser* v. *United States* in 1942 emphatically told all and jury selection officials, specifically those of the Northern District of Illinois, not to use such lists, and particularly not to use that of the Illinois League of Women Voters. This Court's command was flagrantly disobeyed. The dignity of the Court and the future of the jury system demand meaningful corrective action.

The *Glasser* case not only forbids the use of private membership lists as a source of selection of prospective

jurors, but lays down the general principle which should govern courts in protection of the jury system. This Court said, "tendencies, no matter how slight, toward the selection of jurors by any method other than a process which will ensure a trial by a representative group are undermining processes weakening the institution of jury trial, and should be sturdily resisted (*Glasser v. United States*, 315 U. S. 60, 86).

Here the tendencies toward improper selection were not slight but were massive. The methods used were grossly improper; they were not designed to ensure trial by a representative group but by a specially selected group of believed "good" jurors. These undermining and destructive processes, much less than being sturdily resisted by the courts below, in this case have been condoned.

E.

Petitioners Are Entitled to Raise the Jury Points.

In the Government's Brief in Opposition to certiorari herein no contention was made that the juries were legally selected. Nor can such contention well be made, for the Jury Commissioner's abandonment of his duties and the methods of selection employed by both Jongsma and the Clerk violated virtually every basic rule this Court has laid down for jury selection, rules, which for the welfare of the country, must be made to have vitality and strength.

The Government's position (Brief in Opp., p. 19) is that Criminal Rule 12(b)(2) provides that the objections must be raised before trial or be deemed waived, and that petitioners "failed to make any showing of prejudice which would justify the Court in granting relief from the waiver." Criminal Rule 12(b)(2) provides in relevant part:

"*Defenses and Objections Which Must Be Raised.*

> Defenses and objections based on defects in the institution of the prosecution or in the indictment or information other than that it fails to show jurisdiction in the court or to charge an offense may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. * * *"

The issue presented by the Government's position is clear:

First, Criminal Rule 12 pertains only to objections pertaining to defects in the institution of the prosecution. By its terms, therefore, it has application only to the objections petitioners raise as to the grand jury; it has nothing to do with the same objections as applied to the petit jury. The Government's contention as to waiver, if valid, would not save the petit jury.

Second, the Government concedes that the rule provides that a court "for cause shown" may grant relief from the waiver which arises from a failure to challenge the array of an indicting grand jury before trial. However, the Brief in Opposition would convert the words "*for cause shown*" which actually appear in Rule 12(b)(2) into "*showing of prejudice*," which words are not in the Rule. No authority is cited for this conversion or interpretation of Rule 12(b)(2), and we think none can be, for *United States* v. *Ballard*, 329 U. S. 187, 195, makes it clear that when a showing is made that impermissible methods of selection have been used, it is not incumbent upon a defendant to show that actual prejudice resulted to him in the decision of his matter. It is enough that he show that seriously erroneous standards of selection were used and that damage has been done to the jury system.

Third, the points petitioners raise are their constitutional rights to have matters concerning them considered

and passed upon by a fairly and lawfully selected grand jury, and their constitutional rights upon indictment, to be tried only by a fairly and lawfully selected petit jury. Petitioners are not raising hypertechnical criticisms as to minor deviations from statutory precepts in impanelling jurors. They are raising basic questions as to the composition of the juries and are asserting constitutional rights fundamental to our system of justice. "A rule of practice must not be allowed for any technical reason to prevail over a constitutional right." (*Gouled* v. *United States*, 255 U. S. 298, 313.) "Orderly rules of procedure do not require sacrifice of the rules of fundamental justice." (*Horpel* v. *Helvering*, 312 U. S. 522, 557.) Rule 12 is but a technical rule of procedure designed to aid in the orderly administration of justice rather than to thwart it.

Ample cause, we submit, exists for excusing any believed waiver of petitioners' rights to object to the indicting *de facto* grand jury:

1. The Government, which by a wholly unique procedure, after trial, verdict, judgment, appeal, and while the case was pending in this Court upon certiorari, succeeded in having all determinations up to that point vacated or suspended and the case brought back to the trial court for a reopening of a pre-trial suppression of evidence hearing. When the case was in this re-opened posture, petitioners filed their motions attacking the jury selection procedures. In its opinion in this very case this Court remarked that the fair administration of justice is not "a one-way street" (355 U. S. at 244). It would be a cruel anomaly were it held that the prosecuting sovereign can reopen a criminal case at the pre-trial stage but that the indicted citizen in the same case did not have the same right; it would be particularly repellant to civilized notions of justice were it held that the indicting sovereign could so reopen a case upon a charge which subsequently proved to be false, *i.e.*,

that the indicted defendants had concocted a perjurious record, while the indicted defendants could not reopen it upon a valid charge which they proved to the hilt, *i.e.*, that they were indicted by a grand jury 56% of whose members had been selected by a wholly unauthorized stranger to the courts and most of whose members were selected through use of impermissible standards regardless of who selected them.

2. Rule 12(b)(2) does not in express terms define the nature of the "cause" which will warrant relief from waiver. However, the second sentence of the rule says that the motion shall include all objections "then available to the defendant." Two concepts are thus involved, timeliness and availability of facts or evidence. Construing the rule in its entirety and reasonably, we suggest it means that a defendant must raise any objections as to the institution of the prosecution against him of which he reasonably should have knowledge and which were reasonably available to him before trial.

3. It may be conceded that the facts as to the jury selection irregularities were in existence at the time of the indictment herein. Literally, those facts were available to petitioners. However, in a meaningful sense, they were not available to them unless petitioners are to be deprived of their right to the presumption that public officials properly perform their duties. It long has been the law that public officials are presumed to fulfill their duties until the contrary is shown. (*Philadelphia & T. R. Co. v. Stimpson*, 14 Pet., 448, 458; *Weyauwega v. Ayling*, 99 U. S. 112, 119; *Quinlan v. Greene County*, 205 U. S. 410, 420; *United States v. Chemical Foundation*, 272 U. S. 1, 14.) A citizen is not required, at least until he is put upon notice, to act as a watchdog on jury commissioners and court clerks to see that they fulfill their duties and to see that they are not in virtual contempt of Supreme

Court orders telling them not to use private membership lists for purposes of jury selection.

4. The illegalities here were not of a kind readily to come to the notice of litigants or lawyers. Where women are systematically excluded from jury service, or persons of color are so excluded, mere observation of the venire for a petit jury may tend to put a litigant on notice of the possibility of such exclusion. But there was nothing external here that would destroy the usual presumption that the officials were performing their duty. As quickly as petitioners were put on notice of the irregularities, they moved promptly, and the membership of the District Court moved promptly to correct them for future cases (App. 150). But that did petitioners no good. And an opinion such as the present Court of Appeals opinion herein serves only to invite tampering with jury selection procedures by condoning violations of jury principles unless, contrary to the preception of this Court, the litigant can show that some type of undefined "actual prejudice" resulting particularly to him.

We submit that *Ballard* v. *United States*, 329 U. S. 187, disposes of the alleged waiver question in this case. This Court permitted a question as to the exclusion of women from jury service to be raised on a second appeal to this Court after the point had been abandoned by failure to brief or argue it on an original appeal to the relevant Court of Appeals and on complete waiver of it on a second appeal to the Court of Appeals. *Ballard* stands for the broad proposition that when a basic question as to jury selection procedures exists in a case, and when an evil has been committed that strikes at the foundation of proper jury selection procedures, no technical rules of procedure prevent this Court from disposing of the point on its merits and in a manner consistent with preservation of the jury system.

V.

THE JURY WAS INSTRUCTED IT COULD USE AGAINST SULLIVAN EVIDENCE NOT OFFERED OR ADMITTED AS TO SULLIVAN.

The evidence against Petitioner Sullivan was so limited upon the original trial that Judge Nordbye reserved decision on Sullivan's Motion for Acquittal to see what the jury would do, and then after the jury verdict he requested briefs and pondered the matter for five weeks. The opinion of Judge Nordbye denying Sullivan's Motion for Acquittal notes the "comparative paucity of the evidence which refers directly to Sullivan." (R. 3255.)

The Government's case against Sullivan was based upon a single alleged admission which Lubben said Sullivan made to him about February 14, 1946 in Sullivan's office. (R. 859.) The morning after he so testified, Lubben startled the Court by voluntarily recanting his testimony because of overnight "divine guidance." (R. 921.) He then stated that he did not talk to Sullivan in February 1946 in Sullivan's office. Only this recanted story was the theme of Judge Nordbye's denial of acquittal for Sullivan. (R. 3250.) The Court of Appeals gave prominence to this alleged extra-judicial admission of Sullivan, although all extra-judicial admissions "must be received with caution" (*Wilson* v. *U. S.* (1896) 162 U. S. 613, 621), and the talebearer here had recanted.

What above all denied Sullivan a fair trial was that in the instructions the jury was told specifically they could consider against him evidence which the Court had repeatedly said was not admissible against Sullivan, and which the Government did not even offer against him.

The most important evidence on the trial was the "Recapitulation" and supporting sheets turned over to the

Treasury. The Court correctly noted that such evidence "was not to be considered against Sullivan." (Pet. 70.)

But to the contrary, Judge Nordbye had instructed the jury that such evidence was to be considered against Sullivan (R. 2969):

> "You have heard the testimony regarding Cain's alleged admission as to the falsity or incompleteness of those tax returns, and his explanation as to why, in his opinion, at the time they were false and inaccurate. [This is what the Court of Appeals calls 'extracts from Cain's testimony at the suppression hearing * * * not to be considered against Sullivan'.]
>
> "There has also been received in evidence work sheets and data compiled by Mr. Busby, and certain data compiled by Mr. Cain with respect to an alleged tentative compilation of the overages and the disposition such receipts by Shotwell, for raw materials, and the nature and character of the disposition which was allegedly made. [This is what the Court of Appeals calls 'the recapitulation statements * * * not to be considered against Sullivan.']
>
> "*All* of the testimony should be considered by you, *that is, all that testimony should be considered by you* in view of the circumstances, and understanding of the *parties* insofar as it may bear upon any intent of the *parties* to wilfully violate the income tax laws or *their* good faith, or lack of good faith in the matter." (Emphasis and material in brackets ours.)

The foregoing instruction is diametrically opposite to the fact that such evidence was not usable against Sullivan, and yet is the instruction upon which Sullivan's fate was decided by the jury. It is flagrantly wrong and wholly indefensible. In a case where there was a restriction of evidence as it went in, but an instruction which let the jury assume they could convict on such evidence, Justice Frankfurter's opinion in *Anderson* v. *U. S.* (1942), 318 U. S. 350, 356, shows a new trial must be given.

CONCLUSION.

There are several steps which might be taken to correct the manifold injustices in this case. We suggest the Court should weigh them in the light of broad policy considerations:

Petitioners, who always have protested their innocence, and who took the stand initially in an endavor to prove it but were overcome by perjurer Lubben and his doctored records, have been tortured long enough. It is fourteen years since they voluntarily went in and disclosed the matters which might increase the tax Shotwell already had paid for 1945 and 1946 of $827,000. The demurrer to the motion to dismiss which motion pleaded immunity in bar should have been overruled. It is nearly seven years since the Court of Appeals, on June 15, 1955, ordered suppression of unconstitutionally obtained evidence and directed a new trial. That order was not based upon a perjured record and was proper. However, the new trial was thwarted by the presentation of a grossly unjustified Motion to Remand in this Court. Had a new trial actually been held in 1955 or 1956, the witnesses might still have had some reasonable recollection of what had occurred in 1944, 1945 and 1946, but a new trial in 1962 or 1963 would be one in which memories could not be accurate, and would be offensive to the principle that every citizen should have a prompt trial in a criminal case. We, therefore, respectfully suggest that proper disposition of this case is one which should result in its dismissal whether on that or some other ground.

If we consider relief from a technical point of view, it is apparent that the first error was in permitting an illegally composed body to return an indictment. This error calls for reversal with directions for dismissal of the indictment.

The next major error was the trial before an illegally composed petit jury. This warrants a new trial.

The next error was the introduction in evidence of confessional material obtained from petitioners under promises of immunity. This could be corrected by an order here vacating this Court's order of remandment and all subsequent proceedings and directing the Court of Appeals to reinstate its original order of June 15, 1955.

Connected with the suppression issue is the issue concerning abuse of this Court's procedures in obtaining the order of remandment. We suggest a remandment so obtained should be vacated.

Certainly, convictions cannot be upheld after it is known that the record on which the original jury acted was tainted by Lubben's perjury and doctored records, which the jury were told by the United States were true (R. 2879, 2937) and which they believed were true (R. 3073). This warrants a new trial.

Sullivan was convicted on evidence which never had been admitted as to him. This warrants a new trial as to him.

Respectfully submitted,

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APPENDIX A.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

Constitution of the United States:

Amendment IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

26 U. S. C. 1952 ed., Sec. 3761:

"SEC. 3761. COMPROMISES.

(a) *Authorization.*—The Commissioner, with the approval of the Secretary, or of the Under Secretary of the Treasury, or of an Assistant Secretary of the Treasury, may compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Depart-

ment of Justice for prosecution or defense; and the Attorney General may compromise any such case after reference to the Department of Justice for prosecution or defense.

(b) *Record.*—Whenever a compromise is made by the Commissioner in any case there shall be placed on file in the office of the Commissioner the opinion of the General Counsel for the Department of the Treasury, or of the officer acting as such, with his reasons therefor, with a statement of—

(1) The amount of tax assessed,

(2) The amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and

(3) The amount actually paid in accordance with the terms of the compromise."

28 U. S. C. (1952 Edition):

"§ 1861. *Qualifications.*

Any citizen of the United States who has attained the age of 21 years and resides within the judicial district, is competent to serve as a grand or petit juror unless: • • •

(4) He is incompetent to serve as a grand or petit juror by the law of the State in which the district court is held. (June 25, 1948, ch. 646, § 1, 62 Stat. 951.)"

• • • • • •

"§ 1864. *Manner of drawing; jury commissioners and their compensation.*

The names of grand and petit jurors shall be publicly drawn from a box containing the names of not less than three hundred qualified persons at the time of each drawing.

The jury box shall from time to time be refilled by the clerk of court, or his deputy, and a jury commissioner, appointed by the court.

• • • • • •

The jury commissioner and the clerk, or his deputy, shall alternately place one name in the jury box without reference to party affiliations, until the box shall contain at least 300 names or such larger number as the court determines. (June 25, 1948, ch. 646, § 1, 62 Stat. 952)" Ill. Rev. Stats. 1951, Ch. 78:

"§ 13. When by reason of challenge in the selection of a jury for the trial of any cause, or by reason of the sudden sickness or absence of any juror for any cause, the regular panel is exhausted, the court may direct the sheriff to summon a sufficient number of persons having the qualifications of jurors to fill the panel for the pending trial, but upon objection by either party to the cause to the sheriff summoning a sufficient number of persons to fill the panel, the court shall appoint a special bailiff to summon such person: Provided, the same person shall not be appointed special bailiff more than once in sixty days. Any person who seeks the position of a juror, or who asks any attorney or other officer of the court or other person to secure his selection as a juryman, shall be deemed guilty of a contempt of court, and be fined not exceeding twenty dollars ($20), and shall thereby be disqualified from serving as a juror for sixty days thereafter, and such fact shall be sufficient ground for challenge. Any attorney or party to a suit pending for trial who shall request or solicit the placing of any person upon a jury, shall be deemed guilty of a contempt of the court and be fined not exceeding one hundred dollars ($100.00), and the person so sought to be put upon the jury shall be disqualified to serve as a juror for sixty days. [As amended by act approved June 21, 1933. L. 1933, p. 684. In force Jan. 1, 1934.]"

APPENDIX B.

EXCERPTS FROM STATEMENTS OF THE DISCLOSURE POLICY.

1. "Taxpayers who have failed to declare their full income and pay the tax due 'may escape criminal prosecution through voluntary disclosure of the deficiency only in cases where such voluntary disclosure is made before investigation is started'." (Statement of Secretary of the Treasury Morgenthau, May 28, 1945, R. 19.)

2. "* * * the man who makes a disclosure before an investigation is under way protects himself and his family from the stigma of a felony conviction. *'And there is nothing complicated about going to a collector or other revenue officer and simply saying, 'There is something wrong with my return and I want to straighten it out'.*" (Secretary of Treasury Vinson, Aug. 21, 1945, R. 19.)

3. "Mr. Nunan again stressed the Bureau policy of refraining from instituting criminal proceedings against taxpayers who come forward voluntarily and pay up delinquencies plus interest and civil penalties before the Bureau has begun investigating their cases." (Press Release of Treasury Department, October 5, 1945, R. 3132.)

4. "And what is a voluntary disclosure? A voluntary disclosure occurs when a taxpayer of his own free will and accord, and before any investigation is initiated, discloses fraud upon the Government. * * * *The simple 'statement that 'I have filed false tax returns and I want to make the Government whole' would constitute a complete disclosure.*" (Italics added.) (Address by J. P. Wenchel, Chief Counsel of the Bureau, publicly released by Treasury, May 14, 1947, R. 3134, 3136.)

5. "One of the important elements in settling cases with civil penalties and without prosecution, has been the Treasury's policy of not prosecuting persons who make a voluntary disclosure of their fraud before the Treasury begins an investigation of their cases. This means that, in order *to assure himself against criminal prosecution*, a repentant taxpayer must disclose his fraud to an official of the Bureau of Internal Revenue before the case has been assigned for examination and before an investigating officer of the Bureau has requested advice from appropriate officers of the Bureau regarding the case." (Italics added.) (Press Release by Secretary of the Treasury Snyder, May 25, 1947, R. 3140.)

APPENDIX C.

CHRONOLOGY OF LITIGATION AND THE RE-INVESTIGATION.

(Steps in this and connected litigation in Roman; steps in re-investigation in italics.)

• • • • • •

Government counsel attached a "Chronology of Litigation" as an appendix to their brief when the case was first here. (Brief for United States, No. 1, O. T. 1957.)

Since the case has become even more complicated we believe an updated "Chronology" will be helpful. Moreover, since we charge evidence was withheld from this Court in 1956 and 1957 when the prosecutors sought the remandment order, a table which places principal events of the re-investigation (so far as the record reveals them) in chronological relationship to the steps in the litigation may be of assistance. (Petitioners are referred to as "defendants" in this Chronology.)

• • • • • •

March 14, 1952: Indictment returned.

Oct. 6, 1952: Motion to suppress evidence based on defendants' "voluntary disclosure" of early 1948 filed.

Nov. 12, 13, 21, 1952: Hearing on motion to suppress. (It was at this hearing that the Government in 1957 asserted Busby, Cain and Sauber gave fantastic perjury.)

Nov. 21, 1952: Order entered denying motion to suppress evidence.

March 19, 1953: Revenue Agent Mann, Treasury Agent in charge of case, suffers "complete mental breakdown" and was "unresponsive to questions put to him." (R. 551-554.)

Sept. 15 through Oct. 16, 1953: Trial on the merits.

Dec. 15, 1954: Defendants' briefs filed in Court of Appeals *inter alia* attacking Government star witness Lubben's "records" as falsified and his testimony as perjurious.

Dec. 15, 1954: *Revenue agent in Chicago objects to way case being handled. (Stein aff. attached Mo. to Remand.)*

March, 1955: *Internal Revenue Service national office entertains "strong suspicion" the voluntary disclosure might not have taken place in March 1948. (App. 198-9, Stein aff. attached Mo. to Remand.)*

March 31, 1955: Defendants' reply brief filed in Court of Appeals *inter alia* further attacking Lubben's testimony and "records" as perjurious.

April 29, 1955: *Internal Revenue Service commenced full scale investigation of administrative handling of the Shotwell Manufacturing Company and related income tax cases for years 1944 through 1949. (Stein aff. attached Mo. to Remand (Amended,) pp. 7-13.)*

June 15, 1955: Decision of Court of Appeals reversing judgments of conviction and remanding for new trial with instructions to sustain defendants' motion to suppress.

August 10, 1955: *After interrogation (App. 1419) 29 page sworn statement (App. 1419) taken from Revenue Agent Lima (who commenced the examination of Shotwell's affairs pursuant to the disclosure) in which Lima did not claim he ever filled out a revenue agent's report, knew of any settlement, computed tax at approximately $20,000, or prepared a form 870 (App. 1420).* (See contra representations to this Court recited in 355 U. S. at 240, n. 15.)

Sept. 15, 1955: Jeopardy assessment claiming $3,172,000 taxes, penalties and interest for the years 1944-5-6 entered against Shotwell. Of this, $1,036,000 was asserted for taxes for 1945-6 as contrasted with $286,000 deficiency asserted in this case. On September 23 Company filed action in District Court for injunction restraining collection on ground assessment was arbitrary and capricious. (Ultimately went to Ct. of Apps. as *Homan v. Long*, 242 F. 2d 645.)

Oct. 17, 1955: Petition for writ of certiorari and conditional cross-petition for writ of certiorari filed.

Nov. 8, 1955: *Stanley Graflund gives Treasury agents 22 page recorded statement (App. 985). No claim made that Busby did not know of black market transactions until approximately July 1, 1948 (App. 1177).* (See contra representation to this Court recited in 355 U. S. at 239.)

Dec. 1, 1955: *Department of Justice received letter from Chief Counsel Internal Revenue recommending grand jury investigation of possible violations of Titles 18 and 26 of the United States Code. (So asserted in Government's original Chronology.)*

Dec. 6, 1955: Solicitor General, in letter to Clerk, advised this Court that investigation by Internal Revenue Service was in progress; that upon receipt of full report Government expected to in this Court motion remand case to District Court on ground of perjury by or on behalf of defendants as to fact of voluntary disclosure. Solicitor General requested this Court defer action on certiorari petitions.

Dec. 9, 1955: Attorneys for defendants, in letter to the Clerk, advised this Court that Treasury Department had been grossly misinformed and that charges of perjury and of asserted "new" evidence were unwarranted.

Jan.-March, 1956: *Department of Justice reviewed files, determined to institute grand jury proceedings and assigned case to two special attorneys. (So asserted in Government's original Chronology.)*

March or Apr., 1956: *Defendant Huebner secretly meets with Government attorneys (App. 711).*

Apr. 9, 1956: Grand jury investigation commenced in Chicago to determine whether various indictable offenses may have been committed, including perjury, obstruction of justice and conspiracy to evade taxes, by defendants and others.

Apr. 10, 1956: Grand Jury subpoena issued to Leon J. Busby, Shotwell accountant, directing him to produce numerous books and papers.

Apr. 11, 1956: Defendants filed Complaint and Petition in the District Court praying injunction restraining Gov-

ernment attorneys from presenting any evidence to grand jury which the Court of Appeals ordered suppressed in this case.

Apr. 17, 1956: District Court granted Government's motion to dismiss defendants' Complaint and Petition of April 11. Defendants appealed.

Apr. 18, 1956: Court of Appeals set May 2, 1956, as date for oral argument on above appeal and stayed subpoena duces tecum issued to Leon J. Busby or any other subpoena of like tenor.

Apr. 1956: *Revenue Agent Lima, in Chicago for approximately one week preparing to testify before new grand jury; did not testify (App. 1431-1437).*

Apr.-May, 1956: *Defendant Huebner secretly authorized new lawyer (without discharging his counsel of record) to open negotiations with Government (App. 711).*

May 10, 1956: *H. Stanley Graflund gives prosecutors 58 page recorded statement in which he repeatedly tells of a trip with Busby to Lubben in New York early in 1948 and that "It was on that return trip that I talked to Mr. Busby about the Shotwell Manufacturing Company and its involvement with Mr. Lubben." (App. 1125-1130.)* (See contra affidavit to this Court recited in 355 U. S. at 239.)

May 11, 1956: Court of Appeals affirmed judgment of the District Court dismissing the Complaint and Petition of April 11. *(Homan Manufacturing Company, et al. v. Russo, et al.*, 233 F. 2d 547.)

June 1, 1956: Solicitor General, in letter to Clerk of this Court asserted that the stay entered by Court of Appeals April 18, 1956 and in effect until May 11, 1956 preventing enforcement of grand jury subpoena which would have compelled Busby to submit to the grand jury document which original Court of Appeals opinion herein held should be suppressed, had delayed grand jury inquiry and requested this Court to defer action on the certiorari petitions.

June 6, 1956: Counsel for defendants, in letter to the Clerk, advised this Court that only impediment to the

grand jury proceedings had been a limited stay with respect to the suppressed documentary evidence; that if the Department had discovered any new evidence that it legitimately could have presented, it would long ago have been presented to the grand jury; requested action on the certiorari petitions.

June 11, 1956: This Court granted Solicitor General's request to defer consideration of the petitions for writ of certiorari. (351 U. S. 980.)

June 14, 1956: Company granted summary judgment by District Court invalidating $3,172,000 jeopardy assessment of September 15, 1955 upon findings it was based upon conclusions of Revenue Agent Mammel, was patently arbitrary, and wholly void; that it was not necessary to decide whether such action sprang from malice or incapacity; that Mammel suffered a complete mental breakdown on March 19, 1953, and in February 1956 remained unable to recall basic rules of taxation and points developed during the criminal trial of late 1953 to which he should have applied fair judgment. (Government immediately appealed.)

July 18, 1956: Defendants and owners filed petition in the District Court entitled *In The Matter Of The April 1956 Term Grand Jury* praying protective power of the District Court against alleged misuse of the grand jury and requesting that the grand jury minutes be produced in open court; that the grand jurors be interrogated by the court; that counsel for the grand jury be admonished or disciplined; and that certain Treasury agents be punished for contempt. District Court granted Government motion to dismiss.

July 22 and 24, 1956: *Defendant Huebner gives prosecutors and Treasury agents tape recorded conferences; reduced to 21 page memorandum July 28, 1956 (App. 555), in which he asserts black market overages originally commenced at 5¢ a pound [half the rate that had been asserted by Lubben], that certain goods did not bear any overage whatsoever, and Lubben's records indicated he was "trying to lay off" money on somebody.*

July 26, 1956: *Agent Lima, after considerable interrogation, taken before grand jury; gave no testimony about supposed settlement, making out a revenue agent's report computing tax at $20,000, or preparing a Form 870. (App. 1137-1141.)* (See contra representation to this Court recited in 355 U. S. at 240, n. 15.)

July 27, 1956: Defendants and others filed notice of appeal from the District Court's order of July 18, 1956 re grand jury.

July 29, 1956: *Defendant Huebner gives prosecutors tape recorded conference; reduced to 19 page memorandum Aug. 21, 1956 (App. 555).*

Aug. 7, 1956: *Defendant Huebner gives prosecutors tape recorded conference; reduced to 9 page memorandum Aug. 28, 1956 (App. 555).*

Aug. 21-22, 1956: *Defendant Huebner before grand jury, inter alia swears overages started at 5¢ (App. 947-952).*

Aug. 26, 1956: *Joint conference of prosecutors with Graflund and Huebner; reduced to 21 page typewritten memoranda on Aug. 27, 1956 (App. 555).*

Aug. 28, 29 and 30, 1956: *Graflund before grand jury (App. 1151); repeatedly swears he fully informed Busby of the black market dealings on the club car of train coming from New York in January, 1948 (App. 1198-1201). Makes no claim Busby did not know until late June 1948 (App. 1138).* (See contra affidavit to this Court recited in 355 U. S. at 239.)

Sept. 17, 1956: *Defendant Huebner gives prosecutors conference; reduced to 4 page memorandum Sept. 18, 1956 (App. 555) in which he says he has no recollection of Chicago Athletic Club meeting with Sullivan and Urban in July 1948 at which purchase and destruction of Lubben's records was discussed; doesn't recall ever being in Chicago Athletic Club with Urban (App. 854).* (See contra affidavit to this Court attached to Supplement to Mo. Remand.)

Sept. 19, 1956: Prosecutor Russo makes affidavit referred to in entry of Oct. 15, 1956, *post.*

Sept. 26, 1956: *Defendant Huebner gives prosecutors conference; reduced to 6 page memorandum Oct. 19, 1956*

(App. 555); reaffirms statement of Sept. 17 that he "recalls nothing" of meeting with Sullivan and Urban at Chicago Athletic Club (App. 854).

Oct. 4, 1956: *Revenue Agent Lima, after considerable interrogation and becoming "scared" (App. 1444), placed under lie detector, says he did not recommend case be settled for $20,000, did not submit or prepare a revenue agent's report and does not know if a Form 870 was prepared: Told lie detector operator he had been interrogated so much that he had trouble recalling what was in his mind and what he had heard or had been asserted to him (App. 1445-1451, 1455-6, 1478).*

Oct. 8, 1956: *Revenue Agent Lima, after further interrogation (App. 1453) and being told lie test was inconclusive (App. 1454), taken before grand jury. Still no testimony as to preparing a report, a $20,000 tax or a Form 870 (App. 1465). Said he formed "impression" about Aug. 1, 1948 that Busby had learned of Shotwell's black market problem 3 to 5 months prior thereto (App. 1387).*

Oct. 15, 1956: Motion to Remand filed by Government in this Court based on affidavits of Stein (Revenue Service lawyer), Yaden (Revenue Service detective), Howard (Dept. Justice) and Russo (Dept. Justice), in which latter swears, as of Sept. 19, 1956, "From statements of fact within the personal knowledge of witnesses • • • and from facts and circumstances already in the record it appears that prior to June 21, 1948 • • • no disclosure, voluntary or otherwise, had been made • • •"; that Urban had informed him of an asserted meeting with Huebner and Sullivan to discuss acquiring Lubben's records and destroying them; no mention was made of Huebner's denial on Sept. 17 (see *supra*) of such meeting.

Nov. 13, 1956: Decision of Court of Appeals reversing the District Court's order of July 18, 1956, and remanding with directions to enter injunction prohibiting use civilly of suppressed material. *In The Matter of The April 1956 Term Grand Jury*, 239 F. 2d 263.

Nov. 15, 1956: Motion to Remand (Amended) filed by Government in this Court based upon same affidavits of Stein, Yaden, Howard and Russo.

Dec. 19, 1956: *Revenue agent Lima further interrogated by prosecutors in Washington, D. C. and gives 32 page (App. 989) sworn statement, changing story in details (App. 1501) and now sometimes talking about having filled out revenue agent's report (App. 1483) and sometimes mere "computations" (App. 1495-7). No mention of Form 870 (App. 1478-9).*

Dec. 24, 1956: Defendants' Answer To Motion (Amended) To Remand filed in this Court. It strongly asserted, *inter alia*, that the Russo affidavit was mere hearsay (p. 27, thereof *et seq.*) and untrustworthy (Note at p. 11 thereof.)

Dec. 31, 1956: Motion of Frank J. Huebner, *pro se*, To Withdraw From Opposition To Government's Petition For Certiorari, Motion To Withdraw From Conditional Cross-Petition For Certiorari, And Consent To Government's Motion To Remand, filed in this Court.

Jan. 7, 1957: Motion of Harold A. Smith and others for leave to withdraw as counsel for Frank J. Huebner filed in this Court.

Jan. 9, 1957: Government's Supplement To Motion To Remand filed in this Court based on affidavit of defendant Huebner dated Dec. 17, 1957.

Jan. 22, 1957: *Revenue Agent Lima interrogated by prosecutors (App. 1501-3).*

Jan. 23, 1957: *Revenue Agent Lima again taken before grand jury; now swears that in 1948 he filled in the formal parts of revenue agent's report (App. 1505) re Shotwell; computed a tax of approximately $20,000 (App. 1504); is hazy and does not know whether he obtained a Form 870 (App. 1479); has no knowledge that the Shotwell tax case was "fixed," and has heard nothing of any money being passed to anyone (App. 1513); explains his recantations and changes as follows, "• • • when I testified the first time I thought I knew just a little about this case and, by golly, with all these conferences and interviews and refresher courses, it is amazing how much I know about it today • • •" (App. 1382). "Right after" he testified, prosecutor Russo promised to help Lima if he got in trouble in any way (App. 1506-7).*

Jan. 23, 1957: Defendants' Reply To Supplement To Motion To Remand filed in this Court, asserting, *inter alia* (p. 5 ff.), that Huebner affidavit, assuming its truth, was insufficient to overturn testimony of Busby and Cain that the former advised, and the latter decided to make, and did make, a disclosure in January 1948.

Feb. 3, 1957: *H. Stanley Graflund further interrogated by prosecutors (App. 1205).*

Feb. 4, 1957: Court of Appeals reverses summary judgment voiding jeopardy assessment and remands case for full trial. (*Homan Mfg. Co.* v. *Long*, 242 F. 2d 645.)

Feb. 17, 1957: *Huebner and Graflund further interrogated by prosecutors in presence of Lubben (App. 1205). (Lubben had moved to Puerto Rico in 1949. He was fetched from there for this "conference" in Chicago extending from Feb. 15 to Feb. 19, 1957 (App. 946).)*

Feb. 20, 1957: *H. Stanley Graflund taken before grand jury; recants previous testimony that he had informed Busby of black market dealings in January 1948 and now says Busby appeared to know nothing about them until about July 1, 1948.*

Feb. 25, 1957: This Court granted Government's petition for certiorari limited to the issues raised in the amended motion to remand and supplement thereto.

Feb. 27, 1957: Indictment returned against Cain and Sullivan and others by the April 1956 Term Grand Jury, which did not charge that anyone had committed perjury with respect to the voluntary disclosure.

March 24, 1957: Upon refusal of Government to make discovery in the civil suit attacking the $3,172,000 jeopardy assessment, District Court enters final judgment under Rule 34 voiding assessment. (Government appeals.)

July 9, 1957: Defendants filed motions in District Court attacking validity of grand and petit juries in this case (App. 15). (Denied because of pendency of case in this Court.)

Aug. 19, 1957: Graflund affidavit given Aug. 17, 1957 lodged with Clerk of this Court.

Aug. 1957: Brief for United States filed in this Court representing (p. 31) that "except to the extent it has been thwarted by the dilatory tactics of respondents the Government has endeavored to bring the true facts to light as promptly as possible"; that (p. 30) if a further hearing was granted, Revenue Agent Lima would testify that he had prepared a revenue agent's report showing a tax deficiency of about $20,000, which report he destroyed. The brief asserted that (p. 33) "The new evidence [for the reception of which the prosecutors wished the case remanded] indicates that the testimony which placed the date of the so-called disclosure in January or March 1948 was perjurious testimony of respondents and of Busby and Sauber. In fact, the so-called disclosure took place in July, 1948."

Dec. 16, 1957: Decision of this Court remanding for further proceedings (355 U. S. 233).

March 17, 1958: Continuance of new hearing granted because of defendant Cain's health (App. 216-219, 237-249, 261, 266-271, 289-312).

March 17, 1958: Defendants filed motions in District Court for particularization of the issues to be tried on the new hearing and motions again raising questions as to validity of jury selection procedures (App. 111-151).

March 21, 1958: Defendants' motion for order limiting issues or for statement of particulars denied (App. 263).

Apr. 21, 1958: Evidence taken with respect to jury selection questions (App. 315, *et seq.*).

Dec. 1-19, 1958: New hearing held before Judge Nordbye.

Apr. 15, 1959: Judge Nordbye renders opinion denying motion to suppress evidence.

May 22, 1959: Sentences entered. Cain's motion for probation on account of health denied.

APPENDIX D.

1. Grand Jury.

(a) Selections Made by Roy H. Johnson.

May Bourne.....recommended by former petit juror (App. 147)

Mathew Classen.....recommended by former grand juror (App. 147)

Mary Jane Henning .....recommended by former grand juror (App. 147)

Robert J. McWalter .....recommended by former grand juror (App. 147)

Louis W. Northway..recommended by former grand juror (App. 147)

Euphemia Parker....recommended by former grand juror (App. 147)

Marion O. Rose.....recommended by former grand juror (App. 147)

John Oscar Karlson.....volunteer (App. 147)

Clarence Kruse.....volunteer (App. 147)

Lucille McDermott.....perhaps a volunteer (App. 147)

(b) Selections Made by Richard Jongsma.

Hazel S. Underhill.....volunteer (App. 417)

Wm. K. Mahn.....volunteer (App. 417)

John J. Jachera.....volunteer (App. 417)

Emma A. Schlieckert.....volunteer (App. 318, Cain Ex. 1B and 1C)

Roy L. Pierce.....telephone book (App. 331)

Fred Albly.....telephone book (App. 331)

Alexander C. Rice.....telephone book (App. 321)

James C. Delaney.....volunteer (App. 321-2)

Mae W. Peterson.....volunteer (App. 323-4)

Grace M. Lundholm.....volunteer (App. 325-6)

Jesse Devers.....telephone book (App. 326)

John Van Antwerp.....telephone book (App. 326)

Gust Uddman.....telephone book (App. 326)

2. Petit Jury.

(a) Selections Made by Roy H. Johnson.

Francis R. Schubert...recommended by former petit juror (App. 417)

Margaret M. Capinegro .....recommended by former petit juror (App. 417)

Jean F. Lawler.....Illinois Opera Guild List (App. 417)

Ruth L. Schiller.....League of Women's Voters List (App. 417)

Harry Marshak.....recommended by another individual (App. 147)

Leroy J. Ryan.....recommended by former grand juror (App. 147)

Stanley Grzwacz.....recommended by former grand juror (App. 147)

Rose Blondin (alternate)...League of Women's Voters List (App. 147)

(b) SELECTIONS MADE BY RICHARD JONGSMA.

Ethel A. Gassen.....volunteer (App. 329)
Arthur Amodeo.....telephone book (App. 335)
Anthony Massero.....telephone book (App. 336)
Helen Sajewski.....telephone book (App. 337)
John E. Jasch.....telephone book (App. 336)
Wm. A. Schmidt (alternate)...telephone book (App. 334)

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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 142

THE SHOTWELL MANUFACTURING COMPANY (RENAMED HOMAN MFG. CO., INC.), A CORPORATION, BYRON A. CAIN AND HAROLD E. SULLIVAN, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The order and opinion of the District Court denying petitioners' motion to suppress evidence (Pet. 37-54) on the rehearing directed by this Court has not been reported. The order and opinion of the District Court denying petitioners' untimely motions challenging the arrays of the grand and petit juries (Pet. 73-83) is also unreported. The opinion of the Court

of Appeals affirming the judgments of the District Court (Pet. 55-72) is reported at 287 F. 2d 667. The prior opinion of the Court of Appeals, reversing convictions of petitioners on the ground that the trial court erred in denying their motion to suppress evidence, is reported at 225 F. 2d 394. This Court's opinion vacating the judgment below and remanding the cases for further proceedings is reported at 355 U.S. 233.

JURISDICTION

The judgments of the Court of Appeals were entered on February 8, 1961 (Pet. 55), and a timely petition for rehearing was denied on April 11, 1961 (Pet. 2). On April 27, 1961, Mr. Justice Clark extended the time for filing a petition for a writ of certiorari to June 9, 1961. (Pet. 2.) The petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION, STATUTE AND RULE INVOLVED

Constitution of the United States:

Fifth Amendment

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life,

liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Internal Revenue Code of 1939:

SEC. 145. PENALTIES.

* * *

(b) *Failure to Collect and Pay Over Tax, or Attempt to Defeat or Evade Tax.*—Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

* * * * *

(26 U.S.C. (1952 ed.) 145(b))

Federal Rules of Criminal Procedure:

RULE 12. PLEADINGS AND MOTIONS BEFORE TRIAL; DEFENSES AND OBJECTIONS

* * * * *

(b) *The Motion Raising Defenses and Objections.*

(1) *Defenses and Objections Which May Be Raised.* Any defense or objection which is capable

of determination without the trial of the general issue may be raised before trial by motion.

(2) *Defenses and Objections Which Must Be Raised.* Defenses and objections based on defects in the institution of the prosecution or in the indictment or information other than that it fails to show jurisdiction in the court or to charge an offense may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction or the failure of the indictment or information to charge an offense shall be noticed by the court at any time during the pendency of the proceeding.

(3) *Time of Making Motion.* The motion shall be made before the plea is entered, but the court may permit it to be made within a reasonable time thereafter.

* * * * *

QUESTIONS PRESENTED

1. Whether petitioners' pre-trial motion to suppress evidence, based on an alleged "voluntary disclosure" of tax derelictions to Treasury officials in reliance upon the Treasury Department's then existing voluntary disclosure policy, should have been granted, notwithstanding the trial court's finding that the alleged disclosure was dishonest, false and fraudulent and was concocted

for the express purpose of concealing petitioners' true tax liability.

2. Whether this Court should re-evaluate the evidence and determine whether Government witnesses gave false testimony in affidavits presented to this Court in support of the motion to remand and at the further hearing on remand of the case to the District Court, despite the express findings to the contrary by the District Court, which held that fraud permeated the showing made by petitioners before it at the original suppression hearing, at the trial and at the supplemental suppression hearing.

3. Whether the trial court, following the further suppression hearing directed by this Court, should have granted a new trial inasmuch as it stated in its opinion, denying suppression of evidence, that it was "entirely probable" that Government witness Lubben, in his testimony at the trial in 1953, "may have exaggerated the amounts of the payments that he and his confederates made to Shotwell."

4. Whether the trial court erred in denying petitioners' motions, filed nearly four years after the verdicts, challenging the arrays of the grand and petit juries.

5. Whether the trial court erred in its instructions to the jury.

STATEMENT

On March 14, 1952, an indictment in two counts was returned in the United States District Court for the Northern District of Illinois, charging petitioners Shotwell Manufacturing Company, a corporation, and the individual petitioners (together with Frank J.

Huebner) as corporate officers with willful attempted evasion of a large part of the corporation's income tax for the years 1945 and 1946. (R. 4-7.)[1] As set forth in the bill of particulars (R. 8-9), the unreported income consisted of premium payments received by the corporation on the sale of candy at prices in excess of the recorded invoice and O.P.A. ceiling prices, and of payments received for wholly unrecorded sales.

Petitioners filed a pre-trial motion to suppress evidence. The motion, as amended (R. 120-127, 144-145), alleged that, in reliance upon a promise of immunity under the then existing voluntary disclosure policy of the Treasury Department, and before any investigation had been initiated, petitioners in 1948 had made a valid disclosure to a Treasury official of the tax derelictions for which they were later indicted. The motion also alleged, and petitioners sought to show in support (R. 131, 150-151, 174-175, 204-207, 215-217, 248, 254, 285, 2579), that the corporation's unreported receipts were offset by unreported (unclaimed) over-ceiling price expenditures for goods purchased and that petitioners had not profited from the transactions.

Following a pre-trial hearing on the motion in 1952 (R. 150-448), the trial court (Judge Nordbye, sitting by special designation of former Chief Justice Vinson) concluded that no good-faith disclosure had been made

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[1] In referring to the record, the Government will adopt the symbols used by petitioners (See Pet. 8, fn. 3). Accordingly, references to the record of the original suppression hearing and the trial will be preceded by "R." References to the record on the supplemental hearing ordered by this Court on petitioners' motion to suppress evidence, printed as an appendix to petitioners' briefs to the Court of Appeals, will be preceded by "App."

and denied the motion to suppress. (R. 447-448, 3242-3247.)

After a five-week jury trial in 1953, petitioners and Huebner were found guilty as charged. (R. 2990.) The corporation was fined $10,000 on each count. The individual petitioners and Huebner were sentenced to imprisonment for three years on each count, the sentences to run concurrently, and were fined varying amounts. (R. 3012, 3015-3016, 3018-3019, 3075, 3221-3224, 3256-3257.)

In 1955, the Court of Appeals (one judge dissenting) reversed the convictions and ordered a new trial on the ground that the motion to suppress should have been granted. In the opinion of the majority of the court (225 F. 2d at p. 403), petitioners "did disclose the *facts*" and the disclosure was timely because it was made before any investigation was initiated. The United States petitioned for a writ of certiorari.

After the petition had been filed, the Department of Justice received information from the Internal Revenue Service that an investigation then in progress indicated that perjured testimony relevant to the issues raised by the motion to suppress had been given at the pre-trial hearing on the motion and at the trial.

The Solicitor General advised this Court of the receipt of this information and thereafter filed a motion to remand the case to the District Court for the taking of further evidence on the suppression issue. The motion to remand, as amended and supplemented, alleged that the newly discovered evidence clearly indicated that the Court of Appeals' decision sustaining

the motion to suppress was based on a perjurious record attributable to the fraud of petitioners.

This Court (355 U.S. 23) granted the petition, vacated the judgment of the Court of Appeals and remanded the case to the District Court. Its instructions were to hold a further hearing on the suppression issue; to make such new findings on this issue as might be appropriate in light of the further evidence and the entire existing record; and either to enter new final judgments or to grant a new trial.

A three-week supplemental hearing on the suppression issue was held by the District Court in December 1958. Defendant Huebner, who had not been a witness at the original suppression hearing or at the trial, testified as a Government witness,[2] particularly in relation to the receipt and disposition of the Shotwell Company's unreported income for 1945 and 1946. His testimony showed that the corporation received payments in currency from David Lubben, between November 1944 and December 1946, for merchandise sold to Lubben or his companies. These payments by Lubben represented (1) premium payments in excess of the prevailing O.P.A. ceiling prices at which the merchandise was invoiced and (2) payments for shipments of merchandise which were not invoiced at all. Huebner recounted seventeen occasions on which he personally received such payments from Lubben, those payments totaling about $300,000. In addition, Huebner testified that he directed Shotwell employees Roeser, Grathund

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[2] Huebner later withdrew his plea of not guilty and entered a plea of guilty. (App. 1800-1801.)

and Mrs. Morrill to receive cash payments from Lubben. Although much of the money received by Roeser and Graflund was used by the corporation for the purchase of corn in the black market,[3] the currency received by Huebner was divided among Cain, Sullivan and himself. Thus, of the $300,000 in currency which Huebner received from Lubben, Huebner retained about $45,000 for his own use; while the balance, roughly $250,000, went into the pockets of petitioners Cain and Sullivan.[4] (App. 561-642.)

There also was evidence at the supplemental hearing of petitioners' attempts to "fix" the tax case in the summer of 1948—attempts which necessarily involved the corruption of Internal Revenue personnel (App. 683-689, 1071-1075, 1344-1366, 1520-1533)—and of their efforts to thwart the investigation being conducted by the Internal Revenue Service through destruction of evidence and concealment of information (App. 682, 689-691, 1076-1082).

On April 15, 1959, the District Court issued new findings of fact and conclusions of law and entered an order again denying the motion to suppress evidence. (Pet. 37-54.) Among other things, the court found that

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[3] Roeser and Graflund testified at the trial that Lubben delivered certain cash payments to them, beginning in the fall of 1945. Their testimony, and that of Mrs. Morrill, was that these payments were either paid out immediately to procure corn on the black market or were placed in the company vault and later expended for that purpose. (R. 780-782, 1700-1709, 1717-1722, 1731-1734, 1737, 1740-1742, 1780-1789.)

[4] In testimony given at the original suppression hearing and at the trial, both Cain and Sullivan denied that they personally had received any of the cash paid by Lubben. (R. 256, 264-269, 2638, 2654, 2671.)

(*id.*, p. 42) "the evidence is overwhelmingly clear that not only were substantial sums of black-market money paid to Shotwell as premium payments by Lub'en during 1944, 1945 and 1946 totaling between three and four hundred thousand dollars, but also that the greater part of this so-called black-market money was appropriated by Cain, Huebner and Sullivan for their own personal use;" that (*id.*, p. 49) "[i]n representing to the Government that all of the premium payments to Shotwell were expended for raw materials, these defendants made a dishonest, false and fraudulent disclosure * * * concocted for the express purpose of misleading the tax officials;" that (*id.*, p. 50) "the record now persuasively establishes that the defendants never did disclose the true facts to the Treasury Department;" that (*id.*, pp. 53-54) "fraud permeated the showing made by these defendants before me at the original suppression hearing, as well as at the trial and the supplemental hearing;" and that (*id.*, p. 54) "no honest, bona fide voluntary disclosure to any government official ever was made by Shotwell or these defendants with respect to Shotwell's 1945 and 1946 taxes as contemplated by the voluntary disclosure policy in existence at the time." The court concluded as a matter of law that (*id.*, p. 54) a "dishonest and false disclosure cannot be held to be a timely voluntary disclosure."

On May 22, 1959, the District Court entered new judgments of conviction which, so far as petitioners are concerned, were the same as those entered origi-

nally in 1953.[5] (App. 1797-1811.) The convictions were affirmed by the Court of Appeals, the court holding, *inter alia*, that petitioners' motion to suppress evidence was properly denied. (Pet. 55, 60.)

ARGUMENT

1. Petitioners' primary contention (Pet. 20-24) is that the evidence of unreported receipts which they furnished the Government, allegedly in reliance on the Treasury Department's former voluntary disclosure policy, should have been suppressed. But petitioners, on the facts found, had no basis for claiming the benefits of that policy—a policy which offered immunity from prosecution in return for full disclosure of tax derelictions. The information disclosed by petitioners was designed to *conceal* the true tax liability of the Shotwell corporation, for it was represented to Treasury officials that *almost all* of Shotwell's unreported receipts had been spent for purchase of raw materials, whereas in fact only a small proportion of the unreported income had been so expended. (*Supra*, pp. 8-9.) As the District Court found (Pet. 37, 49) after a protracted evidentiary hearing, the disclosure was dishonest, false and fraudulent, and was concocted for the very purpose of misleading the Treasury Department.

In its opinion in this case, this Court observed that the voluntary disclosure policy contemplated taxpayers

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[5] Huebner was sentenced to three years imprisonment, execution of which was suspended, and was fined $5,000. (App. 1804, 1807-1808.)

making "a clean breast of things to the Treasury"; it directed a further hearing in order to resolve the issue whether a bona fide disclosure had in fact been made. (355 U.S. at pp. 235, fn. 2, 242, 245, fn. 21.) Certainly, then, it is unnecessary to argue that false statements and fraudulent representations to the government, in the guise of a voluntary disclosure, could not come within any permissible interpretation of the former voluntary disclosure policy. A "disclosure" which conceals and deceives is neither a disclosure nor bona fide.[8] Cf. *In re Monroe*, 110 F. Supp. 507 (N.D. Tex.), affirmed, 215 F. 2d 81, certiorari denied, 348 U. S. 914; *Bateman v. United States*, 212 F. 2d 61, 65-66 (C.A. 9th); *Whiskey Cases*, 99 U. S. 594.

The Fifth Amendment issue sought to be raised by the petition is not presented by the facts of this case. The decisions upon which petitioners rely involve prisoners (or suspected persons under questioning) from whom confessions were obtained by overreaching on the part of enforcement officials. Thus, in *Bram v. United States*, 168 U. S. 532, 561, an accused murderer was taken to a detective's office and questioned while stripped of his clothing; and in *Rogers v. Richmond*, 365 U. S. 534, 535-536, another accused murderer was told that his arthritic wife would be arrested and

[8] Petitioners again assert (Pet. 9, 11, 13) that whether the unreported income was actually paid out for raw materials or not would make no difference in the additional taxes to be paid by the Shotwell corporation. This is not true. See Judge Nordbye's opinion on the remand (Pet. 48-50); and see the Government's original petition for certiorari in this case (pp. 18-19), and its reply brief to the opposition (pp. 3-4), No. 470, O. T. 1955.

brought to the police station if he did not confess. In cases of this kind the question is "whether the behavior of the State's law enforcement officials was such as to overbear petitioner's will to resist and bring about confessions not freely self-determined * * *." *Rogers* v. *Richmond*, 365 U. S. 534, 544.

There was no conduct even remotely comparable leading to the revelations in this case. A public offer was made to all taxpayers; and petitioners, who had not even been accused, voluntarily came forward and admitted unreported receipts.[7]

The overreaching here was on the part of petitioners, who wished to avail themselves of the offer of immunity and yet evade, by a new falsification, payment of the taxes which the immunity offer was designed to collect.[8] This, therefore, is a case in which the record clearly establishes that petitioners' revelations were not induced by "constitutionally impermissible methods". *Rogers* v. *Richmond*, *supra*, at 541.

2. Petitioners' charge (Pet. 4-6, 13-18, 25-28) that

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[7] See also *Hardy* v. *United States*, 186 U. S. 224, 229; *Ziang Sung Wan* v. *United States*, 266 U. S. 1, 14; and *Smith* v. *United States*, 348 U. S. 147, 150, which are cited in the dissenting opinion to this Court's previous decision in this case. *Shotwell* v. *United States*, 355 U. S. 233, 248.

[8] Judge Nordbye found that "petitioners had been in no way misled by representatives of the Government as to the effect of their disclosures." (R. 3246; and see original petition for certiorari in this case, *supra*, p. 23.)

[9] Petitioners' reliance (Pet. 23) on *Rex* v. *Barker*, 2 K.B. 381, is misplaced. The full report of that case, 3 All E. R. 33 (1941), reveals that the taxpayer there, unlike petitioners, ultimately did make a timely disclosure of the full extent of the fraud perpetrated on the revenue.

government witnesses, through pressures exerted upon them, were induced to give false testimony at the supplemental suppression hearing and in affidavits (those of Huebner and Graflund) presented earlier to this Court in support of the motion to remand. They allege that what the supplemental hearing really established is not that fraud permeated the showing made by them, as the courts below have found, but, rather, that this Court's remand order was induced by fraud on the part of the United States.

Petitioners attempted to justify these charges in the District Court (see their argument to the court, App. 1676-1742), but the court found them baseless. In his opinion and order, Judge Nordbye stated that he did not believe any government official had attempted to have any witness testify falsely; that there was no foundation for the suggestion the government witnesses were trying to "frame" petitioners; that Huebner's candid and self-incriminating admissions lent credence to the government's position that he was trying, to the best of his ability, to tell the full story; and that Graflund was attempting to tell the truth as he remembered the events. (Pet. 37, 52-53.) Furthermore, contrary to the statements in the petition (pp. 26-27), Judge Nordbye *did* find that Sauber, Busby and Cain had testified falsely in many respects as to the time and the manner of the alleged disclosure. (Pet. 42-48.) The Court of Appeals stated (Pet. 55, 60) that "[t]he district court on remand clearly considered relevant testimony of the defendants untrue and in effect absolved the affidavits of Huebner and Graflund of the charge of fraud."

What petitioners now seek is to have this Court weigh the evidence and determine the credibility of witnesses. The Court has repeatedly stated that it will not do so. *Glasser* v. *United States*, 315 U. S. 60, 80; *Stilson* v. *United States*, 250 U. S. 583, 586; *Goldman* v. *United States*, 245 U. S. 474, 477; *United States* v. *Johnston*, 268 U. S. 220, 227.

3. Petitioners contend (Pet. 12-13, 28-32) that Judge Nordbye found, upon the evidence at the supplemental hearing, that the testimony of Lubben, the government's principal witness at the trial, was outrageously false on a critical issue, *i.e.*, the amount of black-market payments to Shotwell which was not reported in the corporate returns. They contend that they are, therefore, entitled to a new trial.

At the trial the government proved that these payments amounted to about $450,000. (R. 1838-1840, 1844-1846.) Petitioners assert that the new evidence established that the amount was only $234,000. They state further that this "was the figure asserted by the prosecutors to Judge Nordbye". (Pet. 29).

The government made no such assertion in the supplemental proceedings, and petitioners, so far as we can ascertain, have obtained the figure by a miscalculation based solely upon payments which Huebner testified he personally received directly from Lubben.[10]

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[10] Huebner received other payments from individuals acting in Lubben's behalf. (App. 603-605, 629-633, 640-641.) Furthermore, there were many other very substantial payments by Lubben to other Shotwell officials, Rosser and Graflund. (R. 1701-1707, 1740-1741.) These are apparently ignored in petitioners' figure of $234,000.

The government, indeed, made no effort, during the proceedings on remand, to establish the total of Shotwell's black-market receipts; that was not in issue. Its duty, under this Court's mandate (355 U.S. at pp. 239-242, 245, fn. 21), was to show that the alleged voluntary disclosure either was not timely or was not bona fide. At the outset of the hearing, the prosecutor stated (App. 541):

> The only evidence that the Government proposes to adduce before this Court is evidence controverting the defendant's motion to suppress. The Government has no intention of ascertaining or asking this Court to ascertain what Shotwell's tax liabilities were, is or might have been.

Petitioners' insistence on the figure of $234,000 has no basis in the record. In fact, petitioner Cain himself testified at the pre-trial suppression hearing that the black-market receipt figures submitted in Shotwell's alleged voluntary disclosure (over $366,000 for 1945 and 1946) "were as accurate as is possible to make them." (R. 258-261, 3096; Pet. 85.)

But petitioners, relying upon a few phrases from the lengthy opinion on the remand (Pet. 37-54), contend that Judge Nordbye has now found that the testimony on which the verdicts rest is outrageously false and that Huebner's testimony shows that Lubben lied at least to the extend of $132,000. We submit that this is a distortion of Judge Nordbye's meaning. His comment that Lubben "may have exaggerated" (Pet. 41) the amounts of his payments must be read in context.

In the opinion, after noting that the events in question had happened fourteen years ago, that the black-market transactions were complicated and numerous, and that Shotwell, Huebner and petitioners had kept no records, Judge Nordbye said (Pet. 11-12):

> * * * Consequently, it is perfectly understandable that when a witness like Huebner attempts to recount the some sixteen instances when he received substantial sums of money on behalf of Shotwell as over-ceiling payments on candy sold by that company, the amounts and circumstances as to the disposition of the money may not be too clear in his memory. However, the testimony he has given at the supplemental hearing is *reasonably consistent and compatible with the testimony given by the government witnesses at the trial* regarding these payments. * * * Huebner may be mistaken as to the exact amounts of money received and when the payments were made. Moreover, that Lubben may have exaggerated the amounts of the payments that he and his confederates made to Shotwell is entirely probable. But the evidence is overwhelmingly clear that not only were substantial sums of black-market money paid to Shotwell as premium payments by Lubben during 1944, 1945 and 1946 totaling between three and four hundred thousand dollars, but also that the greater part of this so-called black-market money was appropriated by Cain, Huebner and Sullivan for their own personal use. * * * [Emphasis added.]

In other words, Judge Nordbye indicated that, as a result of the lapse of time, the absence of records and the complicated nature of the events, both Huebner and Lubben, though generally in agreement, were probably mistaken as to some details.[11]

This is also confirmed by Judge Nordbye's subsequent comment when a motion for new trial, based upon petitioners' present contention, was vigorously pressed upon him. (App. 1774-1796.) After listening to lengthy argument, he said (App. 1790):

> I don't find there is any variance except I think it is much more clear on the suppression hearing as to where this money went to.
>
> We had Lubben's testimony at the trial and other circumstantial evidence, but, now we have Lubben's [Huebner's] testimony which has given much light as to where this money that was paid to Shotwell was diverted. * * *[12]

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[11] It stands to reason that Lubben, who kept records, would be more likely to recall the transactions with accuracy than would Huebner, who kept no records at all. Huebner's general statement that Lubben "lied on the stand" (Pet. 29) came during the third day of a merciless badgering on cross-examination, and was followed immediately by a statement that Lubben had made a "mistake" as to one particular transaction. (App. 692-809.) Evidence as to alleged "doctoring" of Lubben's records by Tobias (Pet. 12, 29) was nothing new. It had been developed at great length at the trial and was disregarded by the jury. (R. 2556-2557, 2613-2618, 2678-2679.)

[12] The second reference to Lubben is an obvious slip. It was Huebner who testified as to disposition of the money. See the pertinent passage in Judge Nordbye's opinion. (Pet. 41.)

We also note that during the supplemental investigation numerous statements were taken by the Government from the witnesses Huebner, Graflund and Linna. These, together with the grand jury transcripts, were turned over to petitioners for pur-

1. Petitioners claim (Pet. 32-35) that the trial court erred in denying the motions they filed in July 1957 (App. 15-16, 111-115), nearly four years after the verdicts, challenging the arrays of the grand and petit juries. The moving papers alleged, in substance, that the panels were selected through discriminatory and illegal practices followed by the Clerk of the District Court and the Jury Commissioner, including unlawful delegation of the powers of the Jury Commissioner.

The trial court, after a full hearing (App. 312-373), held that any right of petitioners to challenge the jury panels had been waived by their failure to raise the issue before trial, and that petitioners had failed to make any showing of prejudice which would justify the court in granting relief from the waiver. (Pet. 76-77.) The court's ruling was clearly correct, for petitioners waived any rights they might have had to question the constitution of the grand and petit juries by their failure to comply with Rule 12, Federal Rules of Criminal Procedure, *supra*, pp. 3-4. *Scales* v. *United States*, No. 1, O.T. 1960, decided June 5, 1961; *United States* v. *Clark*, 276 F. 2d 647, 654 (C. A. 7th), reversed on other grounds, 365 U. S. 312; *Miranda* v. *United States*, 255 F. 2d 9, 16 (C. A. 1st); *Batsell* v. *United States*, 217 F. 2d 257, 259 (C. A. 8th); *United States* v. *Klein*, 210 F. 2d 217, 220 (C. A. 2d); *Ford* v. *United States*, 201 F. 2d 300 (C. A. 5th). Furthermore,

poses of cross-examination. After both sides had rested, the Government offered to turn both the statements and the grand jury transcripts over to Judge Nordbye to aid him in determining whether the testimony of the witness was inconsistent. Counsel for petitioners objected. (App. 1638-1642, 1748-1749; and see Judge Nordbye's comment, Pet. 53.)

petitioners do not even contend that they suffered actual prejudice, and the trial court, in its detailed opinion (Pet. 73-83), demonstrates that the methods used in the selection of jurors did not result in the exclusion of any class or in the composition of juries which were not truly cross-sections of the community.

5. Finally, petitioners state (Pet. 35-36) that the jury was instructed it might consider evidence against Sullivan which had been ruled inadmissible as to him, and that the jury "in effect was told that defendants had not acted in good faith because their disclosure had not given them immunity."

Petitioners do not attempt to identify the particular instructions of which they complain, and examination of the charge in its entirety (R. 2947-2983) discloses no basis for their contentions. The trial court specifically instructed the jury (R. 2970-2971) that evidence which had been ruled inadmissible against a defendant was not to be considered against him. Petitioners themselves requested an instruction (R. 3210) that the jury could take into account, as bearing on the issue of intent, the actions of petitioners pursuant to the voluntary disclosure policy. The jury was so instructed (R. 2969-2970) and petitioners took no exception (R. 2983-2989).[13]

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[13] Whatever may be the role of the jury in passing on the admissibility of a defendant's disclosures, the issue does not arise on this record. Both at the pre-trial suppression hearing (R. 27, 28, 29-30) and at the trial (R. 2738-2741, 3209-3210), petitioners specifically and repeatedly waived submission of the issue to the jury. See footnote 19 of this Court's opinion remanding the case, 355 U. S. at 244.

CONCLUSION

The decision of the Court of Appeals affirming the convictions is correct, and no conflict of decisions or important question of law is involved. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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AUGUST, 1961.

☆ U. S. GOVERNMENT PRINTING OFFICE 196- 604033 148

Office Supreme Court, U.S.
FILED
AUG 25 1961
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 16

THE SHOTWELL MANUFACTURING COMPANY (Renamed Homan Mfg. Co., Inc.), A CORPORATION, BYRON A. CAIN AND HAROLD E. SULLIVAN,
Petitioners,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

REPLY BRIEF ON BEHALF OF PETITIONERS FOR CERTIORARI AND MOTION TO REVERSE UPON PETITION AND BRIEF IN OPPOSITION BECAUSE OF ILLEGAL JURY SELECTION PROCEDURES.

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Respondent.

REPLY BRIEF ON BEHALF OF PETITIONERS FOR CERTIORARI AND MOTION TO REVERSE UPON PETITION AND BRIEF IN OPPOSITION BECAUSE OF ILLEGAL JURY SELECTION PROCEDURES.

MAY IT PLEASE THE COURT:

This Court remanded this case for one purpose—to secure a clear finding as to the "integrity of the record" as to the suppression issue—had petitioners actually gone to the Government at a timely date or was their claim they had gross fiction?

The Brief in Opposition avoids that issue. By reference to the District Court's extraneous findings in 1959 as to what he believed the black market facts to have been (jury questions), it endeavors to conceal the collapse of the Government's case on the remanded issue.

To re-focus on salient points: the Government contended when the case was in this Court in 1956-57 that the original evidence that Petitioners voluntarily went to the Treasury before investigation of Shotwell's taxes had been initiated and because of the Treasury's promises of immunity, was utter perjury; that it was not until after Revenue Agent Krane had been at the plant on June 21, 1948 that petitioners went to the Treasury *at all*. Judge Nordbye, on the new hearing, squarely found against the Government (Pet. 44).

In the original case auditor Busby testified he learned of the black market transactions from Graflund on a trip to New York in January 1948; that this prompted him to advise the disclosure and formed its genesis. This was charged to be rank perjury. It was asserted Busby knew nothing of these affairs until *after* June 21, 1948. But Judge Nordbye found Busby did so learn of the black market deals when he and Graflund "were on the train together in January, 1948" (Pet. 43). Busby and Cain had testified that they were told by Revenue Agent Sauber to supply information in order to avoid prosecution. On remand Judge Nordbye found such testimony "entirely probable" (Pet. 45). Originally it had been testified that preparatory work of assembling of records from which to reconstruct the Lubben account had taken place at sundry times during the spring of 1948; the Government promised this Court (Br. for U. S. #1 O. T. 1957, p. 27) it would prove no such work was done prior to June 21, 1948. On remand Judge Nordbye found such work was done during the spring of 1948 (Pet. 45).

Now, despite its prior lurid claims, the Department of Justice concedes the following were the facts as to how the documents we assert should be suppressed were procured:

> "A public offer [of immunity] was made to all taxpayers; and petitioners, who had not even been ac-

cised, voluntarily came forward and admitted unreported receipts"; further, that petitioners "wished to avail themselves of the offer of immunity" (p. 13).

1.

The constitutional question as to whether the Government may use against citizens in a criminal trial incriminating material they have been induced by promises of immunity to prepare and surrender, is distinct from the question as to whether petitioners complied with the voluntary disclosure policy to such an extent that they were entitled to immunity from prosecution.

To argue that petitioners "had no basis for claiming the benefits (immunity) of that [voluntary disclosure] policy" (Br. in Opp. 11) does not meet the constitutional question of whether the Government, assuming it is free to prosecute, may use evidence it obtained by promising immunity.

The first Court of Appeals opinion found the constitutional question inhered in the case (225 F. 2d 394). The minority opinion here recognized the constitutional question as "important, unsettled and not susceptible to offhand resolution" (355 U. S. at 247). The majority held it was not open for decision until it was determined whether the entire claim that petitioners had voluntarily gone to the

1. Contrast these determinative admissions with what was told this Court in 1957:

"This [so-called new] evidence indicates, *inter alia*, that no move was made by respondents to disclose the corporation's unreported black market receipts prior to Special Agent Krane's visit to the corporation's plant on June 21, 1948." (Br. for U. S. in 1, O. T. 1957, p. 25.)

"The new evidence indicates that the testimony which placed the date of the so-called disclosure in January or March 1948 was perjurious testimony of respondents and of Busby and Sauber. *In fact, the so-called disclosure took place in July 1948.* This was subsequent to the occasion (on June 21, 1948) when Special Agent Krane called at the corporation office . . ." (Br. for U. S. in 1 O. T. 1957, p. 33.)

Government and produced papers before the Treasury commenced investigation was rank perjury and a fraud on the courts.

The "important, unsettled" constitutional question which should not be resolved "offhand" thus exists: the promise of immunity *was* made; petitioners *did* voluntarily come forward; petitioners *did* make incriminating statements under the *inducement* of the promise.

Those facts meet the rule of *Bram* v. *U. S.*, (168 U. S. 532, 542-3) that a confession is not admissible if "obtained by any direct or implied promises, however slight . . . for the law cannot measure the force of the influence used, or decide upon its effect upon the mind of the prisoner, and therefore excludes the declaration *if any degree of influence has been exerted.*" As the dissenting opinion when this case was first here shows, it has generally been assumed that the Fifth Amendment bars the use of admissions secured by promises of immunity (355 U. S. at 248) and that principle has been followed repeatedly or recognized in federal income tax cases. (See cases at Pet. 21-22.)

Nor does the fact that part of the confession may have been false as to part of the outgo, or may have overstated the amount of gross income (See Pet. 13, 21), prevent suppression on constitutional grounds because this Court ruled in *Rogers* v. *Richmond*, 365 U. S. 534, 544, that the constitutional question of admissibility is "to be answered with complete disregard of whether or not petitioner in fact spoke the truth." And if probably true confessional material induced by promises of immunity must be suppressed on constitutional grounds, *a fortiori* such material so procured must be suppressed when admittedly it is partially false. The inherent unreliability of evidence so procured is the classic common law cause for suppressing it.

The Brief in Opposition asserts no Fifth Amendment

question is presented because the declarants in *Bram* and *Rogers v. Richmond* were under detention, while petitioners "had not even been accused." The attempted distinction seeks to limit a broad legal principle to a single set of facts, an impermissible stratagem. Moreover, it amounts to a plain denial of the language of the Fifth Amendment, which does not read that "*no prisoner*" shall be compelled to be a witness against himself, etc. It says "*no person*" shall be subject to the things it mentions.

The contention of the Brief in Opposition would strip all constitutional protection from the voluntary disclosure doctrine, for, if a taxpayer came in *before* he was accused, he would not be under detention and, according to the Brief in Opposition, would not fit the fact pattern of *Bram v. U. S.*, while if he came in *after* he was accused, he was never promised immunity. This is in marked distinction to all previous utterances of the Treasury. The Treasury abandoned the voluntary disclosure policy precisely because it felt that even where there had been imperfect disclosures, the promise of immunity which had been extended entitled taxpayers to insist that documents obtained thereunder not be used against them in criminal trials (Treasury Statement, R. 3107, *et seq.*).

If the well settled principles referred to above are, contrary to our view, to be overruled or limited, that should be only after briefs, argument and hearing and upon an opinion that defines the law. The present trilogy of *Shotwell* decisions, two by the Court of Appeals, one by this Court, leaves the law as to what may be obtained by promises of immunity in a highly confused state. It should be settled.[2]

2 Having been unable to establish its claim that petitioners did not surrender their papers by reason of the promised immunity, the present Government brief writers rather obliquely assert that after the documents were surrendered there was an attempt to corrupt some one in Internal Revenue. The Brief in Opposition (p. 9)

2.

The Brief in Opposition flatly refuses to meet the second question presented by the Petition (p. 6), namely, asserts there was evidence at the supplemental hearing of "attempts to 'fix' the tax case * * * attempts which *necessarily* involved the corruption of Internal Revenue personnel." That statement is grossly unfair and unwarranted.

Counsel do not claim they proved this or that Judge Nordbye found it. Their language is a subtle variation by a clever brief writer of a phrase in Justice Harlan's recital in 355 U. S. at 240, that the evidence promised by the Government in 1957, *if true*, would indicate a conspiracy "*possibly* involving the corruption of Government officials." Justice Harlan noted the representation that Agent Lima would testify he prepared a report showing a tax deficiency of $20,000.

However, on the actual hearing Lima admitted that in February 1957 (after he had been put through a lie detector test and repeatedly had been interrogated and "refreshed"), he testified he had *no* knowledge of *any* "fix", or of Sauber, or Johnson, or himself getting any money; that he had "*heard nothing by hearsay or any other way of any fix in the case or anybody getting any money.*" (App. 1513.)

Huebner did testify he gave $10,000 to Cain in two $5,000 payments to "take care of" the tax case, but gave no objective or corroborative details which could be checked as to where he got the supposed sum or how he transmitted it. (App. 684.) Cain categorically denied this. (App. 1607.) AND THERE THE PROOF STOPPED.

Judge Nordbye recited the substance of Huebner's testimony and found, "* * * the Court cannot make a definitive finding as to whether or not any officials of the Government were actually bribed," and continued with the following equivocal statement, "However, I am convinced that this episode regarding the 'fixing' of tax officials by Cain occurred *as related* by Huebner." (Pet. 51.)

All Huebner "*related*" (we say falsely) was that he gave $10,000 to Cain "to take care of" the tax case. Government proof showed that neither Sauber, Johnson nor Lima got any money, and wholly failed to indicate that anyone else did. What was there for petitioners to negative and as to whom? And what possible burden rested on petitioners to prove affirmatively they had not been guilty of crime?

Having been given an unparalleled opportunity to prove their malign charge, and having failed, the prosecutors should not continue to assassinate by allegation. Petitioners are entitled to have their Petition considered in an atmosphere unpolluted by overtones of "corruption." (Emphasis throughout ours.)

whether the processes of this Court were abused by inducing it to hold the cases while witnesses were repeatedly interrogated and thereafter by suppressing important, sworn evidence contrary to the Treasury's "suspicion" that no disclosure had taken place, which would have made impossible the writing of the opinion in 355 U. S. in the form in which it was cast. The Department does not deny, but would have this Court ignore the documented facts set forth at pages 13-17 and 25-28 of the Petition.

There is no question of fact to be resolved: It is undisputed that Treasury functionaries, in the spring of 1955, formed a "strong suspicion" that the alleged disclosure "might not have taken place in March, 1948," which suspicion became "firmly fixed" by the middle of 1955 (Affidavit of Lester Stein, Special Assistant to Chief Counsel, Internal Revenue Service, attached to original and amended Motions to Remand and quoted at App. 197-199). Thereafter every scrap of evidence inconsistent with the "firmly fixed suspicion," even though solemnly sworn to by witnesses friendly to the Treasury before a Special Grand Jury, was ruthlessly suppressed.[3] Ultimately the witnesses' stories came into accord with the "firmly fixed suspicion." As Agent Lima put it on the final (February 20, 1957) of his several appearances before the Special Grand Jury:

> "* * * When I testified the first time I thought I knew just a little about this case and, by golly, with all these *conferences* and *interviews and refresher*

3. Note that the prosecutors in 1955-7 were not dealing with hostile suspects but with friendly witnesses. Graflund had had no connection with Shotwell since 1952, had co-operated with the Government and testified for it in 1953 (R. 1739), began co-operating with it again on November 8, 1955 and felt "grateful" to the Treasury because he had not been included in the original indictment (App. 1110-1111). Lima at all times was a Treasury agent and co-operative. Huebner began "co-operating" with the Government in the early summer of 1956 and long before the Motion to Remand was filed.

courses, it is amazing how much I know about it today." (App. 1382.)

The final versions of the witnesses, resulting from months of "refresher courses" and "glaringly inconsistent and contradictory" (Judge Nordbye, Pet. 52), to the suppressed, spontaneous original sworn versions, were the only ones put to this Court. Those versions made a "convincing showing" (355 U. S. at 242). Had the suppressed, contradictory versions been displayed, there would have been no "convincing showing." But the suppressed, contradictory versions are the ones which the District Court, on the determinative, remanded points, found to be true even though, for other (and we believe improper) reasons he held the disclosure was "fraudulent."[4]

We have referred in the Petition (pp. 26-28) to the clear duty resting on a prosecutor. The following quotation from a case in which it was held that a trial prosecutor,

4. The precision and clarity found in this Court's opinion is missing in the District Court's discursive opinion, entire paragraphs of which are devoted to asserted facts of the tax case. Although the Brief in Opposition at page 16 quotes a claim by the prosecutor that he proposed to introduce only evidence controverting the motion to suppress, page 18 of the Brief relies on a statement of the District Court that the supplementary hearing produced much evidence as to what believed use was made of the money that was paid to Shotwell. As we complain at page 9 of the Petition, the new hearing roamed the entire field. The District Court permitted himself to buttress his opinion with findings, speculations and unfounded criticisms of petitioners (all answerable) with respect to matters that were only for a proper jury trial. In the unprecedented posture in which the case was sent back, petitioners, as a minimum of due process, were entitled to clear, specific and precise findings of fact limited to the precise charges leveled against them here. Unable to prove what it had claimed to this Court, the prosecution induced the District Court to comment on the case generally. Yet the majority had said the case was not remanded to permit the Government "to 'bolster' the evidence upon which the verdict of guilty was returned by the jury" (355 U. S. at 244) and the minority noted that to do so would violate both the prohibition against double peopardy and would deny the right of jury trial on such issues (355 U. S. at 250-251).

should have disclosed to the defendant that a prosecution witness had given contrary grand jury testimony, condenses the relevant rules:

> "The prosecutor must be vigilant to see to it that full disclosure is made at trial of whatever may be in his possession which bears in any material degree on the charge for which a defendant is tried. In the long run it is more important that the government disclose the truth so that justice may be done than that some advantage might accrue to the prosecution toward ensuring a conviction. *Berger* v. *United States*, 1935, 295 U. S. 78, 88, 55 S. Ct. 629, 79 L. Ed. 1314.
>
> "* * * Our standards of fair play in federal criminal proceedings require that the government should present its evidence in its true colors and that it should never be a party to withholding any evidence which materially bears on the credibility of a witness it places on the stand. * * *" (*U. S.* v. *Zborowski*, 2 Cir., 271 F. 2d 661, 668.)

See 60 Col. L. Rev. 858, "The Duty of the Prosecutor to Disclose Exculpatory Evidence"; *People* v. *Savvides*, 1 N. Y. 2d 554, 136 N. E. 2d 853, cited with approval in *Napue* v. *Ill.*, 360 U. S. 264; *Curran* v. *Delaware*, 3 Cir., 259 F. 2d 707, 713; *U. S.* v. *Consolidated Laundries Corp.*, 2 Cir., May 31, 1961, *1961 Trade Cases*, Par. 70,039. Is a prosecutor under a lower duty in the Supreme Court than in the Trial Court? Obviously not. Obviously the higher a case goes in the judicial hierarchy the greater the reliance the court should be able to place in its officers.

The Brief in Opposition seeks to avoid this sordid matter by restating question No. 2 so as to claim we are asking the Court to re-evaluate the testimony of the hearing witness. No. The undenied fact is that the prosecution suppressed relevant exculpatory evidence. The question is whether civilized standards permit that a remandment order may be obtained by such means. That question is

not answered by referring to Judge Nordbye's statement, correct or incorrect, that he did not believe any Government official had attempted to have any witness testify falsely or that Graflund was attempting to tell the truth as he remembered it, etc.

Independently of the question as to the propriety of suppression of evidence by prosecuting officials, this case remains as the first case in which a partial remand was used at the behest of the prosecution in an effort to validate a conviction in a criminal case. The partial remand device was used to protect accused persons' rights in *Communist Party* v. *Subversive Activities Control Board*, 351 U. S. 115, and *Mesarosh* v. *U. S.*, 352 U. S. 1, and has since either been ordered or discussed as a judicial tool in *Lawn* v. *U. S.*, 355 U. S. 339, 366 (Dissent); *Giordenello* v. *U. S.*, 357 U. S. 480, 488; *Sangamon Valley Television Corp.* v. *U. S.*, 358 U. S. 49; *Wird Television Corp.* v. *U. S.*, 358 U. S. 51.

The Court may wish to re-evaluate the desirability of this procedure in the light of evidence now available to it: (1) that delay was consistently sought in this Court while the prosecutors conducted "refresher courses" with their witnesses;[5] (2) that by the time the Motion for Remand

5. Observe that by June 1, 1956 when the second letter was written to this Court requesting delay (see note 6 of this Court's opinion), Graflund already had given the prosecutors two lengthy statements (App. 985-986), both of which were fully corroborative of the original disclosure testimony; Lima had given at least two statements (App. 982-983); Huebner and his new lawyer had been negotiating with the prosecutors for approximately 45 days (App. statements (App. 988, 1432-1433); Huebner and his new lawyer had been negotiating with the prosecutors for approximately 45 days (App. 711).

On June 1, 1956 the Treasury had been "reinvestigating" for more than a year; the special prosecutors had been at work for two months. *All* major pieces of evidence ultimately presented to this Court came into existence after this date. Thus, the keystone piece, Graflund's version that he had not told Busby of the facts in January 1948 from which it was argued that Busby could

was filed in both its original and amended forms (October and November 1956) all three of the Government's witnesses had testified under oath to facts exculpatory of petitioners and glaringly inconsistent with the Government's hearsay affidavit sworn to by prosecutor Russo, and that such testimony was suppressed.

When the case was presented here the Court could not have assumed that these intolerable abuses of elementary criminal procedure were being carried on. The fact that they were carried on may incline the Court to limit application of the Shotwell type of partial remand. This is an evaluation which only this Court is in position to make, because certainly both the District Court and the Court of Appeals would have the greatest reluctance to go into the risks of a procedure this Court had ordered.

3.

That petitioners were convicted by the 1953 jury on seriously false oral evidence and on "doctored" records is not denied although Government counsel now quibble as to the precise amount of the falsity.

Before the jury the Government claimed it proved Lubben paid Shotwell $453,772 in 1945 and 1946 (R. 183-184, 1840, 1848-1849, 2064-2066). Judge Nordbye's *finding of fact* on the new hearing is that the total amount, including $28,000 in the year 1944, was "between $300,000 and $400,000" (Pet. 42). This necessarily means that Lubben "exaggerated" to the jury to the extent of $131,772 ($453,772 ($350,000 + 28,000) = $131,772, which figure we rounded off to $132,000 at Pet. 10, 12, 29). The figure of $132,000 is

not have advised or made a disclosure until much later, did not come into existence until February 20, 1957 (App. 1125-1129, 1134-1204-1205); Lima's version of destroying a revenue agent's report not until December 19, 1956 (App. 1464-1465, 1474). All of these recanted prior versions were solemnly, repeatedly and voluntarily given prior to those dates.

not a "distortion" of Judge Nordbye's findings, nor taken out of context. It is the inevitable mathematical result of his findings.

The question is not whether our calculation that new evidence shows the gross could not have exceeded $234,000 is correct. The Brief in Opposition asserts that figure is wrong. We do not think so, but that is not the point. The vital point is that the new hearing *established to the District Court's satisfaction, and he so found before resentencing petitioners*, that Lubben's testimony to the jury had not been "*true*" and "*sincere*" as he originally believed (R. 3018), but was "*exaggerated*" (Pet. p. 41).[6] On the *District Court's figures*, that "exaggeration" was at least $132,000.

Whether the precise amount of the "exaggeration" be $250,000, $132,000 or $100,000 is beside the point for we are not now determining guilt or innocence or balancing an account. What is important is that the new record, before sentencing, indisputably demonstrated that testimony vouched by the United States to the jury as true, and which the trial court found the jury believed to have been true (Pet. 29, R. 3073), was in fact seriously untruthful on a vital issue.

The Brief in Opposition (Note 11) would excuse Lubben's doctored records with the observation that *defendants* in 1953 had so contended to the jury and the jury (which

6. The learned District Court's use of the word "exaggerated" rather than "mistaken" in his 1958 re-evaluation of Lubben's testimony is important. "Exaggerate" means:

> "to enlarge beyond the bounds or the truth; to delineate extravagantly; to overstate the truth concerning."

As an intransitive verb it means:

> "to misrepresent on the side of greater size, extent, value, etc.; to oversfate the truth." (*Webster's New International Dictionary*, 2nd Edition, Unabridged.)

We believe Judge Nordbye should have used the less delicate term "perjury".

did not have the benefit of the new evidence) "disregarded" the contention. The jury "disregarded" it because in 1953 the United States strenuously assured it the records were "honest." But in 1958 Government witnesses, vouched for by it, agreed the records were doctored and that the doctoring was done by one Tobias. Although the prosecutors knew where Tobias was in New York at the time of the 1958 hearing, they did not call him to deny the doctoring.[7]

The United States vouched to the 1953 jury, *inter alia*:

> "I will tell you who David Lubben is. He is an honest, honorable American citizen. * * * Dave Lubben is telling the truth." (R. 2937.)
>
> "What you have seen are the [Lubben] records which were kept by competent, honest people * * *." (R. 2879.)

Thus the Government in 1953 unfortunately vouched for a monumental liar and for false records.

We submit it was the duty of the Department when the 1958 hearings showed that petitioners had been convicted by seriously untruthful testimony, and upon the strength of doctored records, itself to have moved for a new trial so that a new jury might pass upon the guilt or innocence of the defendants unaffected by this tainted evidence.

The Department seeks to hang onto convictions based on tainted evidence by quoting a finding of Judge Nordbye to the effect that Huebner's testimony on the new hearing was "reasonably consistent" with that given by Lubben at the jury trial, and that in any event the evidence was clear that substantial sums were paid to Shotwell and that the greater part of this was appropriated by Cain, Huebner and Sullivan. There are two ready replies:

(1) It is true that Huebner's testimony as to the *modus operandi* between himself and Lubben was "reason-

7. See Lubben's penchant for perjury displayed elsewhere (Pet. p. 30, note 11).

ably consistent" with that of Lubben, but it is obvious that Lubben's testimony, which exaggerated the gross receipts to the jury by at least $132,000, cannot be characterized as remotely consistent with the truth.

(2) Judge Nordbye's views as to whether any part of whatever sums may have been involved were received by Cain or Sullivan are wholly outside of the issues remanded to him. (His conclusion is not backed by one piece of objective evidence.)

Whatever may be said of this strange case, civilized standards of procedure and evidence, and the dignity of the United States Government forbid the conviction and imprisonment of citizens on testimony as tainted as that shown at bar.

4.

It is respectfully submitted that the problem with respect to the juries which indicted and convicted petitioners is simple.

The Brief in Opposition cannot, and does not, dispute the facts, nor distinguish or explain away any of the cases set forth in the Petition at pages 19-20 and 32-35.

The gross illegality of Commissioner Crooks' delegation of his functions to a private person is so patent that the Brief in Opposition makes no pretense at defense of it. The effect of this illegal delegation was that half the names in the jury wheel were those of persons illegally selected; that 13 members of the grand jury and 5 of the petit jury (excluding alternates) were illegally selected (Pet. 99-100).

Again, it is not disputed that volunteers were incompetent to serve. There were 10 on the grand jury, 1 on the petit (Pet. 99-100).

It is not denied that the Clerk of the Court had been told by this Court not to use private lists as a source of names,

and specifically not to use the Illinois League of Women Voters list, yet one full member of the petit jury and an alternate came from it, and another came from the Illinois Opera Guild (Pet. 99-100).

The showing of invalidity of these juries is so complete that none of the cases cited in the Brief in Opposition is remotely comparable. The juries were inbred, largely self-perpetuated, non-representative groups, and to boot, approximately half the members were selected by a wholly unauthorized person.

The only real argument advanced by the Brief in Opposition is that Criminal Rule 12 (b) (2) provides that a motion raising defects in the *institution of the prosecution or in the indictment* should be made before trial, and that failure to do so constitutes a waiver. There are succinct answers to this:

(1) The waiver, *if applicable at all on the facts here*, would only apply to the motion to dismiss or to quash the indictment because of the invalidity of the grand jury. It has no application to the invalidity of the petit jury.

(2) The rule provides that "* * * the Court for cause shown may grant relief from the waiver." If cause has not been shown here, it is difficult to imagine a case in which it ever can be. Where females are systematically excluded from a jury, or persons of color, a lawyer or a litigant by simple observation is at least put on notice that something may be wrong, but neither a citizen accused of crime nor his lawyer was bound to presume that the Clerk of the Court was not obeying the teaching of *Glasser* v. *U. S.*, and certainly was entitled to assume that the Jury Commissioner had not abandoned all but the ceremonial functions of his office. The presumption always is that public officials are acting properly. Petitioners moved promptly once they became aware of what had occurred. If "cause"

refers to timeliness we submit petitioners were timely. If "cause" is intended to refer to the substantiality or merit of the question raised rather than as to the time of raising it, there can be no doubt that cause has been shown.

(3) Petitioners were constitutionally entitled to a properly selected jury. "A rule of practice must not be allowed for any technical reason to prevail over a constitutional right" (*Gouled* v. *U. S.*, 255 U. S. 298, 313). "Orderly rules of procedure do not require sacrifice of the rules of fundamental justice." (*Hormel* v. *Helvering*, 312 U. S. 552, 557).

(4) This Court's opinion in the case at bar points out that the fair administration of criminal justice is not "a one-way street" (355 U. S. at 244). The Department of Justice made a belated motion to reopen this case and upon an invalid charge. If justice is not a one-way street, citizens accused of crime, raising points that are wholly valid, should be accorded the same right.

Because the record is so clear and because the Government makes no serious attempt to defend the juries, we suggest it would be appropriate to reverse the case upon the Petition and the Brief in Opposition. The opinion of this Court when the case was first here (355 U. S. at 245) recognized that "The course of this litigation has already been protracted." And it has been punishing and crushingly expensive. If the juries were illegal, as they indubitably were, petitioners should not be required to go through further, exhausting and expensive briefing and argument. The case should be brought to an end.[8]

8. Ending the case in this manner would, we suggest, also accomplish substantial justice. Petitioners Cain and Sullivan always have protested their innocence and went on the stand before the jury in an endeavor to prove it. They were overcome by perjurer Lubben and his doctored records. Huebner, an original defendant, did not take the stand. Subsequent events have proved that unknown to the higher officials of the corporation Huebner siphoned some money into his own pocket, and, regardless of what he was charged with, was actually guilty of personal tax evasion. In any event, he has been convicted and sentenced.

The question has importance far beyond this case, for the federal government yearly is moving into new and perplexing fields. It is important that jury selection officials be made to understand they must exercise their duties faithfully and in accordance with the rulings of this Court.

(We think other points are quite clear but recognize that Government offers opposition to them and therefore offer this motion on question No. 4 only.)

5.

The recapitulation statements which we assert should have been suppressed were in any event not received as against Sullivan (R. 1873, 1881, 1889, 1938) yet they were specifically described in an instruction and the jury told they could be considered against Sullivan (R. 2969). Specific objection *was* made and overruled (R. 2985). A general instruction that the jury should not consider evidence not admitted against a particular defendant will not cure a specific instruction which permits it to be considered because it cannot be told which instruction the jury followed. *Price v. U. S.* (5 Cir.), 200 F. 2d 652, 655. It is especially damaging to allow crucially important evidence to be considered against one as to whom it was not admissible. *Blumenthal v. U. S.*, 332 U. S. 539, 559; *Kotteakos v. U. S.*, 328 U. S. 750, 777.

MOTION TO REVERSE.

Petitioners move that the judgment of the Court of Appeals herein be reversed upon the Petition and Brief in Opposition and the cause remanded to the District Court with directions to dismiss the indictment because returned by an illegally composed jury, or, in the alternative, to award Petitioners a new trial because the original trial was held before an illegally composed petit jury.

CONCLUSION.

It is respectfully submitted that if this cause not be reversed upon the Petition and Brief in Opposition that the writ of certiorari issue. The case as it now stands is offensive to traditional principles of justice.

Respectfully submitted,

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August 21, 1961.

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 16

THE SHOTWELL MANUFACTURING COMPANY (RENAMED HOMAN MFG. CO., INC.), A CORPORATION, BYRON A. CAIN AND HAROLD E. SULLIVAN, PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The order and opinion of the district court denying petitioners' motion to suppress evidence (App. 1754–1771; Pet. 37–54)[1] on the rehearing directed by this

[1] Our record references will correspond to those used in petitioners' brief: The record filed in this Court in 1955, consisting of seven terra-cotta-colored volumes, will be designated "R."; the record on the supplemental hearing ordered by this Court on petitioners' motion to suppress evidence, consisting of three cream-colored volumes printed as the Appellants' Appendix for the court below, will be designated "App."; the one-volume Apellants' Appendix printed for the court below in support of a petition for a writ of mandamus in *Sullivan, et*

Court has not been reported. The order and opinion of the district court denying petitioners' untimely motions challenging the arrays of the grand and petit juries (S. 256–275; Pet. 73–83) is also unreported. The opinion of the court of appeals affirming the judgments of the district court (S. 291–307; Pet. 55–72) is reported at 287 F. 2d 667. The prior opinion of the court of appeals, reversing convictions of petitioners on the ground that the trial court erred in denying their motion to suppress evidence, is reported at 225 F. 2d 394. This Court's opinion vacating the judgment below and remanding the cases for further proceedings is reported at 355 U.S. 23.

JURISDICTION

The judgments of the court of appeals were entered on February 8, 1961 (Pet. 55), and a timely petition for rehearing was denied on April 11, 1961 (Pet. 2). On April 27, 1961, Mr. Justice Clark extended the time for filing a petition for a writ of certiorari to June 9, 1961. (Pet. 2.) The petition, filed on that date, was granted on December 18, 1961. (368 U.S. 946.) The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

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al. v. *United States District Court*, C.A. No. 12,140 (which was made a part of the record on appeal in those proceedings by stipulation of the parties (App. 155–158) and which includes the 1960–1961 proceedings in the court below in the case at bar), will be designated "S."; and the two exhibit volumes reprinted for the use of this Court will be designated "Ex. Vol. I" and "Ex. Vol. II."

CONSTITUTIONAL PROVISION, STATUTE AND RULE INVOLVED

Constitution of the United States:

Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Internal Revenue Code of 1939:

SEC. 145. PENALTIES.

* * * * * *

(b) *Failure to Collect and Pay Over Tax, or Attempt to Defeat or Evade Tax.*—Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner

to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

* * * * *

(26 U.S.C. (1952 ed.) 145(b))

Federal Rules of Criminal Procedure:

RULE 12. PLEADINGS AND MOTIONS BEFORE TRIAL: DEFENSES AND OBJECTIONS

* * * * *

(b) *The Motion Raising Defenses and Objections.*

(1) *Defenses and Objections Which May Be Raised.* Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion.

(2) *Defenses and Objections Which Must Be Raised.* Defenses and objections based on defects in the institution of the prosecution or in the indictment or information other than that it fails to show jurisdiction in the court or to charge an offense may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction or the failure of the indictment or information to charge

an offense shall be noticed by the court at any time during the pendency of the proceeding.

(3) *Time of Making Motion.* The motion shall be made before the plea is entered, but the court may permit it to be made within a reasonable time thereafter.

* * * * *

QUESTIONS PRESENTED

1. Whether petitioners' pretrial motion to suppress evidence, based on an alleged "voluntary disclosure" of tax derelictions to Treasury officials in reliance upon the Treasury Department's then existing voluntary disclosure policy, should have been granted, notwithstanding the trial court's finding that the alleged disclosure was dishonest, false and fraudulent and was concocted for the express purpose of concealing petitioners' true tax liability.

2. Whether petitioners were entitled to a new trial because of the comment of the trial judge, in his opinion denying suppression of evidence, that it was "entirely probable" that government witness Lubben, in his testimony at the trial in 1953, "may have exaggerated the amounts of the payments that he and his confederates made to Shotwell."

3. Whether there was any falsity or impropriety in the representations which the government made to this Court in support of the Motion to Remand.

4. Whether the trial court erred in denying petitioners' motions, filed nearly four years after the verdicts, challenging the arrays of the grand and petit juries.

5. Whether the court adequately instructed the jury as to the use of the disclosure documents against Sullivan.

STATEMENT

Faced with very damaging evidence of bad faith and adverse findings on that issue, petitioners have devoted a major part of their brief to attacking the integrity of the trial court, the conduct of government counsel, and the credibility of the government's witnesses. In addition, they charge that the government abused the processes of this Court by inducing it, falsely and improperly, to remand the case, almost five years ago, for supplemental proceedings. These accusations, which were considered and rejected by the courts below, are wholly unwarranted. To avoid further complication of a necessarily lengthy Statement, we shall not endeavor to include the evidence which bears on petitioners' charges of impropriety. The evidence on that subject is discussed in Point III of the Argument, *infra*, pp. 83–90. Similarly, we shall postpone our summary of the evidence relating to the issue of jury selection. See Point IV, *infra*, pp. 103–104, 107–109, 111–112, 114.

1. Procedural history

In 1952, Shotwell Manufacturing Company, the corporate petitioner, and the individual petitioners (together with Frank J. Huebner), as corporate officers, were indicted for willful attempted evasion of a large part of the corporation's income tax for the years 1945 and 1946. (R. 4–7.) The unreported income consisted of some $500,000 in cash premium payments received by the corporation on the sale of

candy at prices in excess of the recorded invoice and O.P.A. ceiling prices, and of payments received for wholly unrecorded sales. (R. 8–9.)

Petitioners filed a pre-trial motion to suppress evidence, alleging that in reliance upon a promise of immunity under the Treasury Department's then existing voluntary disclosure policy, they had made a valid and timely disclosure to a Treasury official of the tax derelictions for which they were later indicted (R. 120–127, 144–145.) The motion also alleged, and petitioners sought to show (R. 131, 150–151, 174–175, 204–207, 215–217, 248, 254, 285, 2579), that the corporation's unreported receipts were offset by unreported (unclaimed) over-ceiling cash premium payments for goods purchased, and that petitioners had therefore not earned a profit from the transactions. After a pre-trial hearing on the motion in 1952 (R. 150–448), the trial court [Judge Nordbye, sitting by special designation] denied the motion to suppress on the ground that no good-faith disclosure had ever been made. (R. 447–448, 3242–3247.)

After a five-week jury trial in 1953, petitioners and Huebner were found guilty as charged. (R. 2990.) The corporation was fined $10,000 on each count. The individual petitioners and Huebner were sentenced to imprisonment for concurrent terms of three years on each count and were fined varying amounts. (R. 3012, 3015–3016, 3018–3019, 3075, 3221–3224, 3256–3257.

In 1955, the court of appeals (one judge dissenting) reversed the convictions, on the ground that the pre-trial motion to suppress should have been granted,

and remanded the case for a new trial with instructions to sustain the motion. In the opinion of the majority (225 F. 2d at 403), petitioners "did disclose the facts" and their disclosure was timely because it was made before any investigation was initiated. The United States petitioned for a writ of certiorari.

After the petition had been filed, the Internal Revenue Service advised the Department of Justice that an investigation then in progress indicated that perjured testimony relevant to the suppression issue had been given at the pre-trial hearing on the motion and again at the trial. The Solicitor General immediately advised this Court of the receipt of this information and thereafter filed a motion to remand the case to the district court for the taking of further evidence on the suppression issue. The motion to remand, as amended and supplemented, alleged that the newly discovered evidence clearly indicated that the court of appeals' decision sustaining the motion to suppress was based on a perjurious record attributable to the fraud of petitioners.

This Court (355 U.S. 233) granted the petition, vacated the judgment of the court of appeals and remanded the case to the district court. Its instructions were to hold a further hearing on the suppression issue, to make such new findings on this issue as might be appropriate in light of the further evidence and the entire existing record, and either to enter new final judgments or to grant a new trial.

A three-week supplemental hearing on the suppression issue was held by the district court in December,

1958. On April 15, 1959, the district court entered an order in which it set forth new findings of fact and conclusions of law and again denied the motion to suppress evidence on the ground that no bona fide disclosure had been made. (App. 1754–1771; Pet. 37–54.) On May 22, 1959, the district court entered new judgments of conviction which, with respect to petitioners, were identical to those entered originally in 1953.[2] (App. 1797–1811.) The court of appeals affirmed the convictions, holding, *inter alia*, that petitioners' motion to suppress evidence was properly denied. (S. 291–307; Pet. 55, 60.)

2. The motion to suppress evidence

As previously noted, petitioners' pre-trial motion to suppress (R. 120–127, 144–145) was predicated on the contention that they had made a timely "voluntary disclosure" to the Treasury Department, in reliance upon the then existing and publicly announced policy of that Department not to recommend prosecution of any taxpayer who made such a disclosure; and that, accordingly, they were entitled to the suppression of all evidence obtained from them subsequent to the disclosure.

(a) The voluntary disclosure policy

The so-called "voluntary disclosure policy" of the Treasury Department, publicly announced in 1945

[2] Huebner, who withdrew his plea of not guilty, entered a plea of guilty (App. 1800–1801), and testified as a government witness at the further hearing on the suppression issue (App. 561), was sentenced to three years imprisonment, execution of which was suspended, and was fined $5,000 (App. 1804, 1807–1808).

and effective until its withdrawal in January, 1952, was an administrative policy which was not formalized in rule or regulation. (R. 3125–3126, 3142.) The substance of it was that in cases in which taxpayers voluntarily disclosed their intentional evasions before an investigation had commenced, the Treasury Department would not refer the case to the Department of Justice for criminal prosecution but would merely assess the tax deficiency plus civil penalties, including the 50 percent penalty for fraud. (R. 3136–3137.) The two most authoritative pronouncements by Treasury Department officials declared that a voluntary disclosure occurs when a taxpayer discloses fraud upon the government (R. 3135–3136), and that the policy "presumes, of course, that the repentant taxpayer cooperates with agents of the Bureau in determining the true tax liability." (R. 3141.) These two statements—one by J. P. Wenchel, Chief Counsel of the Bureau of Internal Revenue, and the other by Secretary of the Treasury Snyder—were issued in May, 1947.[3]

[3] The text of intra-departmental memoranda on the disclosure policy, the text of public statements by Treasury officials on the subject, and testimony given before a Congressional Committee on the subject, after the policy had been revoked, appear in the record. (R. 3103–3153.) Relevant excerpts are set forth in the Appendix, *infra*.

The reasoning behind the policy was described by Mr. Wenchel as follows (R. 3137):

"In excising the man from criminal prosecution, we are merely taking a sensible step to produce the revenue called for by law with the minimum cost of investigation. The man who makes a voluntary disclosure saves us a lot of money in investigating. In return, we can spare him a term in jail. This is good business from his standpoint and it is good business from the Government's standpoint."

(b) The allegations of the motion

Petitioners' motion to suppress evidence (R. 120–127), as amended (R. 144–145), alleged that in January, 1948, relying upon the voluntary disclosure policy, they had made a timely disclosure to a Treasury official that certain black market income, together with fully offsetting deductions for black market purchases, had been intentionally omitted from the corporation's 1945 and 1946 income tax returns. The motion also alleged that after Treasury officials had acknowledged the sufficiency and timeliness of the disclosure, petitioners had made available to Treasury agents the books and records of the corporation, had communicated additional information material to the "omissions and misstatements" in the corporate returns, and had otherwise cooperated with the examining agents to the utmost of their ability. (R. 122–123.)

The motion stated that, at the time the alleged disclosure was made, it was the legal position of the Treasury Department—with which petitioners did not agree (R. 17, 31)—that expenditures for materials in excess of O.P.A. ceiling prices could not be included in the cost of goods sold for the purpose of determining taxable income,[4] and that the corporation therefore owed additional taxes for the years in question.

[4] This question was then pending before the courts. In December 1948, the Tax Court overruled the Commissioner and held such deductions allowable (*Sullenger* v. *Commissioner*, 11 T.C. 1076), and this was followed by a number of decisions to the same effect in the courts of appeals. (R. 144–145, 427–428.) The Commissioner acquiesced in these decisions prior to the hearing on the motion to suppress (see, 1952-2 Cum. Bull. 71).

It further stated that the corporation stood "ready, able and willing to pay such unpaid tax, interest and civil penalties, if any, as might be determined to be due." (R. 144–145.)

The motion prayed for the suppression of all evidence obtained from petitioners subsequent to the alleged disclosure on the grounds that its use would violate the petitioners' rights under the Fourth and Fifth Amendments to the Constitution. (R. 123.)

(c) The original hearing on the motion

In November 1952, a three-day hearing on the motion was held before Judge Nordbye, at which eleven witnesses testified. (R. 150–448.) The principal witnesses for petitioners were Leon J. Busby, Shotwell's accountant since 1942 (R. 168–220, 397–399), and Cain, the corporation's president, (R. 220–259, 339–404.)

Busby testified, in substance, as follows: During the years 1944, 1945 and 1946, the Shotwell Company received substantial cash payments from one David G. Lubben for black market candy sales above O.P.A. ceiling prices. These receipts were neither recorded on the corporation's books nor reported in its income tax returns. Busby first learned of these black market transactions in the course of conversations with H. Stanley Graflund, the corporation's comptroller, during a trip to New York early in January 1948. Immediately upon his return to Chicago, he discussed the matter with Cain and Sullivan (Shotwell's executive vice-president), who told him that all the black market receipts had been used by the corporation for the

purchase of raw materials; that, since they did not wish to reveal violations of O.P.A. regulations, they had kept no records of either the receipts or the expenditures; and that they had not reported the receipts as income because they considered the expenditures for black market purchases deductible and the whole series of transactions a "wash out" for tax purposes. Busby advised Cain and Sullivan that they had a tax problem, as the Commissioner of Internal Revenue would not allow taxpayers to include in cost of goods sold payments in excess of ceiling prices for the purchase of materials. He recommended that they disclose the omissions to the taxing authorities and, according to him, the alleged disclosure was made shortly thereafter. (R. 169–172, 204–207, 209–211, 213–215.)

Busby testified further that, pursuant to instructions from Cain and Sullivan, he revealed the above facts to Chief Deputy Collector Sauber in a series of conferences in January 1948, at one of which he was accompanied by Cain. According to Busby, Sauber said that the disclosure was sufficient and timely; that the Internal Revenue Service would not allow deductions for purchases of raw materials at prices above the O.P.A. ceiling; that the black market transactions should be reconstructed as accurately as possible and a summary of the transactions prepared; and that an agent would be sent out to verify the results and audit the corporate returns. Busby stated that, having received Sauber's assurance that only a civil liability was involved, he [Busby] and his staff, with the assistance of Cain, Huebner and

Graflund, conducted an exhaustive investigation over a period of several months in an effort to reconstruct the amounts involved in the corporation's black market transactions; and that the results of this investigation were summarized in the schedule which he submitted to Revenue Agent Lima (see, Deft. Exs. 1 and 13, suppression hearing, reproduced in the record at p. 3171)[5] when the latter appeared at the corporation's plant in August 1948. (R. 175–189, 198–199, 207–216.) Busby's summary indicated that the corporation's unreported receipts from Lubben, for the years 1944, 1945 and 1946, totaled some $378,000; and its unreported (unclaimed) deductions for black market purchases during the same period totaled some $372,000. The difference—approximately $6,000—was reported as income in the corporation's 1946 return. (R. 131.) There was no indication in the disclosure that a substantial part of the amounts allegedly expended for inventory were in fact appropriated as constructive dividends by Shotwell executive stockholders, including the individual defendants, but unreported as income by them. (App. 1758–1759.)

Cain, whose testimony paralleled Busby's in the above respects, stated that he met with Sauber in January 1948; that he left Chicago for California on January 23 or 24, 1948; that he returned to Chicago from California on March 3, 1948, saw Sauber on March 4, 1948, and went back to California on

[5] As originally identified by Busby, the schedule was one of several sheets admitted as Deft. Ex. 1. (See R. 3096.) The document was also admitted at the trial as Govt. Ex. 186. (Ex. Vol. I, p. 117.)

March 11, 1948; and that he returned to Chicago in the latter part of April 1948, leaving California by automobile about April 21 or 22, 1948. (R. 221–222, 230–232, 250, 252, 399–404.)[6] Apprised by Sauber that over-ceiling expenditures for raw materials would not be allowed the corporation as deductions, Cain claimed to have told Sauber that he was prepared to pay the tax but that Shotwell would probably try to obtain a refund of that portion which was attributable to disallowance of the over-ceiling disbursements. (R. 232, 252–255; Pet. Br. 17, 23.)

With respect to the unreported receipts, Cain testified that the figure of $378,000 reflected in Busby's summary as the total of (R. 260) the "over ceiling payments to The Shotwell Manufacturing Company" was overstated (to an unspecified extent) because it resulted from applying to every invoice sent to Lubben "the maximum over ceiling price" (R. 232), even though on some invoices Shotwell received no over ceiling premium (R. 233). Questioned about the alleged offsetting expenditures for black market purchases, Cain responded that he did not know to whom the money was paid (R. 241, 244, 266); that he "never handled a penny" of the black market receipts (R. 262); and that no one connected with Shotwell could recall the (R. 249) "faceless people" to whom the payments for raw materials were made. (R. 223–224, 244, 256, 258–269, 273–274.) Cain conceded that the figures appearing on Deft. Ex. 1 as expenditures

[6] Cain also testified at the trial that in April, May and June 1948 he importuned Sauber to have an audit made and the tax matter settled. (R. 2561–2562.)

for the purchase of raw materials—which figures purported to show that the unreported receipts were washed out by unreported deductions—were meaningless "plug" figures which he compiled in (R. 233) "less than a minute." As he put it (R. 233): "I knew they weren't any good, and we couldn't substantiate them, but I threw them in for what they were worth. I hoped * * * [the government would believe] that we paid out something." (R. 258–269, 273–274.)[7] In short, it was Cain's testimony that, although they could not substantiate the alleged expenditures, he was certain that, with the exception of the aforementioned $6,000, all the unreported receipts had been expended by the corporation for the purchase of raw materials. (R. 248, 254–255, 263–264, 266.) Moreover, he agreed to give the investigating agents all the help they needed. (R. 401.)

Sauber, who was called as a government witness (R. 281–306), corroborated the testimony of Busby and Cain in all except two material respects. Sauber fixed Busby's first visit to him at about the middle of March 1948 and Cain's within a week thereafter (R. 282–284); and he denied having told Busby and Cain that their revelations constituted a timely and sufficient voluntary disclosure (R. 291). Sauber testified that, about 30 days after the initial visit in March 1948, Cain informed him that there had been a meet-

[7] Revenue Agent Lima testified that when he arrived at the Shotwell plant in August 1948 to begin an audit, Busby presented the summary of black market receipts and expenditures with the comment that the summary represented the unreported receipts and disbursements (R. 321) "as near as they could figure."

ing of all the Shotwell people who were connected with the black market transactions; that they had prepared figures relative to the over-ceiling purchases and sales; and that Cain wanted to turn the figures over to him.[8] Sauber also confirmed Cain's testimony that the latter thereafter importuned him repeatedly to obtain an immediate audit of the Shotwell returns. (R. 285–289, 301–304.)

At the conclusion of the hearing, the court denied the motion to suppress, observing that it would be inappropriate to express its views prior to trial on the credibility of the witnesses and the good faith of petitioners. Accordingly, the court reserved the right, in the event petitioners were found guilty, to file findings of fact and conclusions of law on the motion upon completion of the trial.[9] (R. 447–448.)

After the verdict, the trial court filed a Memorandum Decision (R. 3242–3247), setting forth its findings of fact and conclusions of law on the motion, and holding that (R. 3247) the petitioners "failed to sustain the burden of proof in establishing that a voluntary disclosure was made by them within the purview of the so-called voluntary disclosure doctrine." The court found, among other facts, that contrary to representations made by petitioners to Treasury officials (R. 3246–3247) "large sums of black

[8] As we will show (*infra*, p. 35–36), this conversation with Cain could not have occurred as Sauber testified, for it was not until July 1948 that the meeting was held and the figures prepared.

[9] In this connection the court stated (R. 448): "If Counsel desire that I should file a memorandum forthwith, I have no objection, of course, to doing so * * *." No such request was made of the court.

market receipts received by the Shotwell Company were never paid out for raw materials on the black market or elsewhere during 1945 and 1946," and that by their "false statements and fraudulent representations" to government agents in the guise of a voluntary disclosure, petitioners had actually attempted to deceive the government and to conceal the true facts. In view of this determination, the trial court deemed it unnecessary (R. 3247) "to make any finding as to the exact date when the Government first commenced its investigation of the Shotwell Company's income taxes for the years in question"—that is, on the issue of timeliness.

3. The trial

David Lubben, the Government's principal witness at the trial on the merits, testified that in August or September 1944, he arranged with Huebner[10] to pay a cash premium of ten cents a pound above the O.P.A. ceiling price at which the candy was invoiced (R. 796–797), and that the overceiling transactions commenced in November or December 1944 (R. 798–801). Lubben personally made the following over-invoice

[10] Huebner, a long-time employee of the corporation, was a vice-president and plant manager. He owned less than one per cent of the stock. Sullivan was general counsel, a director, and, beginning in 1946, executive vice-president. In 1945, Cain and Sullivan and their families owned about 48 per cent of the corporation's stock, which holdings were increased in 1946 to about 75 per cent. (R. 748, 1707, 1772, 1793, 2542, 2648; Pet. Br. 6.)

cash payments to Huebner from January 1945 to November 1946:

1-19-45	$10,819.00	(R. 814-819, 1427-1430, 1434, 1441-1452, 1457)[1]
2-7-45	6,183.00	(R. 820-823, 1435-1442)
3-6-45	18,000.00	(R. 823-828, 1453-1490)
3-28-45	15,000.00	(R. 828-831, 1453-1490)
5-3-45	22,124.13	(R. 831-837, 1453-1490)
5-3-45	2,403.00	(R. 831-837, 1492-1498)
5-9-45	6,459.75	(R. 837-841, 1498-1502)
5-25-45	4,455.00	(R. 841-842, 1502-1508)
5-25-45	20,000.00	(R. 842-847, 1508-1516, 1524-1527)
6-28-45	5,524.00	(R. 847-849, 1508-1516, 1524-1527)
9-?-45	30,000.00	(R. 849-855, 1527-1534)
11-27-45	36,148.35	(R. 849-855, 1527-1534)
3-25-46	1,488.00	(R. 888-890, 1542-1554)
3-29-46	35,536.00	(R. 864-876, 1538-1542)
4-?-46	14,000.00	(R. 889-890, 1542-1554)
10-7-46	12,235.00	(R. 892-898, 1555-1565)
11-7-46	319.50	(R. 898-901, 1565-1568)
11-7-46	2,004.00	(R. 901-905, 1565-1568)
10-12-46	35,929.81	(R. 910-920, 1573-1577)
11-8-46	13,146.70	(R. 922-933, 1573-1577)

Similar cash payments were made to Huebner by Lubben's employees, Heitman and Hankermyer (R. 876–892, 1369–1376, 1554), and by his brother-in-law, Moran, who made the final payment in December 1946 (R. 1289–1313.) In one instance, Cain had Lubben pay $1,450 of the overages due the corporation to a Mrs. Krasne in connection with the purchase of jewelry by Cain's wife. (R. 891, 1286–1288, 2628–2629.) The totals of these overceiling cash receipts were (R. 1838–1840, 1845–1846, 2064–2066):

1945	$177,146.23
1946	211,193.19

[1] The first reference indicates the testimony of Lubben; the second indicates the testimony of his bookkeeper, Miss Feldman, who traced the transactions through Lubben's books and records. Most of the above testimony of Lubben was admitted only against Huebner and the corporation. The testimony of Miss Feldman was admitted against all the defendants.

In addition to the above transactions—in which the invoice price was always paid by check and only the overage in cash—the corporation made a number of "unbilled shipments" to Lubben during 1946, for which no invoice was made out and for which Lubben paid both the ceiling price and the overage in cash. (R. 802–805, 933–962.) The "unbilled shipments" by the corporation to Lubben during 1946 totaled $65,532.98. (R. 1845–1846.) All told, the unreported receipts from Lubben during the years 1945 and 1946 were $177,146.23 and $276,726.17, respectively—or a total for the two years of $453,872.40. (R. 1838–1840, 1844–1846, 2064–2066.)

Lubben's direct testimony regarding payments to Shotwell was corroborated, in large part, by documentary evidence. Lubben made and retained some record of many of the cash payments to the corporation, and both Lubben and his bookkeeper, Miss Feldman, keyed the various payments into Lubben's records by identifying the pertinent invoices, book entries of invoice plus overage, "recap sheets," "cash authorizations sheets," and checks to cash. (R. 811–962, 1405–1578, passim.) Although in many instances the complete set of documents covering a particular payment was not available at the time of the trial, Lubben's testimony as to most of the payments was supported by one or more of the above records, and in one instance, by an informal "recap sheet" prepared by Huebner (Govt. Ex. 63–B, Ex. Vol. I, p. 55) and left in Lubben's hands at the time of payment. Lubben's testimony was also corroborated (i) by Cain's testimony on the motion to suppress, which was read into the

record at the the trial (R. 1941–1951), to the effect that the Shotwell people made a compilation which resulted in (R. 1944) "a figure of something like $400,000.00" for the overceiling receipts from Lubben (R. 1943–1944), and (ii) by the so-called disclosure recapitulations introduced at the trial (Govt. Exs. 186, 189 A–E), which reflected a computation of black market receipts in 1944, 1945 and 1946 totaling $378,000.[12]

Shotwell's comptrollers, Howard Roeser and Graflund, and Mrs. Morrill, a bookkeeper, testified at the trial that certain cash payments were received by the corporation from Lubben beginning in the latter part of 1945, that this money was placed in a "corn box" in the company vault, was sometimes shifted to a safety deposit box in a bank, and was expended to procure corn in the black market. Although Roeser and later Mrs. Morrill kept a memorandum record of the amounts deposited in and disbursed from the "corn box," that record, as noted *infra*, p. 40, was destroyed before the trial, on Cain's instructions. Graflund estimated that the cash receipts from Lubben of which he was aware totaled $80,000, while Mrs. Morrill's estimate of receipts within her knowledge was $50,000 or $60,000. The "corn box" was closed around July or August 1946. (R. 778–782, 784–785,

[12] It is noted in this connection that Busby testified at the original suppression hearing that after the summary schedule had been prepared—with the aid of Cain, Sullivan and Huebner—it was checked against (R. 188) "some papers that Lubben had sent in [to the corporation] covering these overceiling items and we were able to compare Lubben's figures with the independent computation that we had made. * * * In many instances the figures were identical and it made us feel that our computations were correct."

1701–1709, 1717–1722, 1730–1737, 1740–1742, 1745–1756, 1780–1789.)

Three Shotwell employees—Roeser, Graflund and Hogan—testified they had made payments, apparently for black market corn or corn syrup, to a Dr. Doe and to a man named Keeley (R. 1732, 1736, 1738, 1782–1785, 2009–2014, 2017), but none of the three could testify to the payment of any specific amount. No witness was called by petitioners to testify that he had received any currency payments from Shotwell for the procurement of corn or any other raw materials in the black market.

In defending on the merits, Cain maintained that the total of the unreported cash receipts from Lubben was much smaller than the $378,000 shown on Busby's summary and indeed was less than a third of $400,000 (R. 2624); that the cash premium payments were received only during the period from about September 1945 to July 1946 (R. 2572, 2626–2627); that "every dime" so received had been expended by the corporation for the purchase of raw materials on the black market (R. 2577–2579); and that for the most part this money was paid out to (R. 2580) "nameless and faceless people." As noted above (see p. 14, *supra*), Busby's summary showed that the corporation's unreported receipts from Lubben were offset (except for about $6,000) by unreported (unclaimed) deductions totalling $372,000 for black market purchases of chocolate, milk, corn syrup, cocoa beans, cocoa bean deal, sugar deal, and "sales expenses and unallocated." The figures for these disbursements were prepared by Cain (Govt. Ex. 185, Ex. Vol. I, p. 116), who gave

them to Busby with instructions to make them add up to and offset the unreported receipts. On cross-examination Cain admitted the offsetting disbursement figures were largely fictitious. (R. 2585–2601.)

Both Cain and Sullivan denied from the witness stand that they personally had received any of the cash paid by Lubben. (R. 2579, 2638, 2654, 2671). As Sullivan put it (R. 2671): "I never saw any of the money, never got any of it myself." According to Cain and Sullivan, the details of the black market transactions were left entirely to subordinates. (R. 2576–2584, 2624, 2650–2654, 2670–2673, 2685.) Huebner, to whom almost all of Lubben's payments were made and who was in charge of the operation of the Shotwell plant, did not take the stand at the trial (although he became a principal witness at the subsequent supplemental hearing).

Cain and Busby testified that the work of compiling data with respect to the corporation's black market transactions was done over a period commencing in January and ending in June 1948. (R. 2577, 2585–2586, 2590, 2837; Pet. Br. 18–19.) Busby further testified that the compilation (Govt. Exs. 189A–189E, Ex. Vol. I, p. 122–126) was prepared from records made available primarily by Gratlund and from hearsay information supplied by Shotwell employees. (R. 2815–2816.)

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[12] In Cain's affidavit of September 22, 1952, in support of the motion to suppress evidence, he also alleged (R. 131) that, immediately following a voluntary disclosure to Sauber in January 1948, petitioners commenced the preparation and compilation of figures with respect to the omissions and misstatements in the corporate returns. Actually, as will be shown (*infra*, pp. 35–36), no work was done on such a compilation until July 1948.

4. Rejection by Judge Nordbye, following the additional hearing ordered by this Court, of petitioners' contentions bearing upon the alleged voluntary disclosure

The supplemental hearing ordered by this Court on the suppression issue commenced before Judge Nordbye on December 1, 1958 (App. 526), and, exclusive of preliminary matters and motions (App. 1–525), consumed three weeks. In all, thirteen witnesses testified at the hearing, four called by the government[14] and nine by petitioners. The testimony of Busby, Sauber and Revenue Agent Johnson was not available to the government, since they, together with Cain and Sullivan, were under indictment for conspiracy to commit various offenses against the United States in connection with this case.[15] The government's principal witness was Huebner, one of the defendants in the case, who, as we have already noted, was plant manager for Shotwell and one of the principal parties to the transactions in question. Cain testified in his own behalf,[16] but Sullivan did not take the stand. On April 15, 1959, the court entered its order denying the motion to suppress.

Judge Nordbye's findings of fact and conclusions of law, pursuant to the Court's mandate (355 U.S. 245), were based upon "the entire existing record"—including the record of the original suppression hearing

[14] Huebner, one of the defendants below (App. 501–984); Grallund (App. 1020–1341, recalled by appellants, App 1545–1548); Revenue Agent Lima (App. 1514–1544); and E. C. Wright, at all times material Internal Revenue Agent in Charge at Chicago. (App. 991–1020.)

[15] See S 1–28.

[16] Cain was asked only seven questions on direct examination, all of them on rather tangential matters. (App. 1607–1608.)

and the record of the trial itself, insofar as relevant to the suppression issue. Judge Nordbye found, among other things, the following:

That, although Graflund probably did inform Busby of the over-ceiling transactions in January 1948, and although Busby, and perhaps also Cain, probably visited Sauber sometime prior to June 21, 1948 (App. 1761), nonetheless, March 15, 1948, was merely "an arbitrary date which was agreed upon by Cain, Busby, and Sauber" as the date Sauber would testify Busby first visited him; that "obviously it was much later" when Sauber was informed that Shotwell was the offending taxpayer (App. 1764–1765) (contrary to the testimony of Cain and Busby that they had made a disclosure to Sauber in January 1948).

That Busby and the Shotwell employees did not work on figures for a voluntary disclosure from January to June 1948; that petitioners made no attempt to turn over to the government any computations of black-market receipts and expenditures until after Special Agent Krane's visit of June 21, 1948; that Cain's plans were to effect an early settlement of Shotwell's taxes before any government agents pried into the company's books and records; and that petitioners made no concerted effort to prepare the black market computations until July 1948. (App. 1760–1762.)

That substantial sums of black market money, totaling between three and four hundred thousand dollars, were "paid to Shotwell as premium payments by Lubben during 1944, 1945 and 1946". (App. 1758.)

That "the greater part of this so-called black market money was appropriated by Cain, Huebner and Sullivan for their own personal use" (App. 1758–1759); and that "only a relatively small percentage of the black-market payments made by Lubben to Shotwell were utilized for the purchase of raw corn" (App. 1763).

That the alleged offsetting black market payments made by Shotwell to wash out the black market receipts were, as represented to the Supreme Court by the affidavits of Huebner and Gratlund, concocted "out of thin air" by Cain (App. 1762).

That "in representing to the Government that all of the premium payments [made] to Shotwell were expended for raw materials," the petitioners "made a dishonest, false and fraudulent disclosure * * * concocted for the express purpose of misleading the tax officials" (App. 1766).

That petitioners "never did disclose the true facts to the Treasury Department in that they failed to reveal that substantial amounts of the unreported income were diverted into the pockets of the officials of the company and falsely contended that substantially all of the black market receipts were expended for overceiling purchases of raw materials". (App. 1767.) In so finding the court noted that this also was necessarily "the jury's conclusion on the record at the trial in that the jury was expressly instructed that, if the over-ceiling payments received by Shotwell were expended for raw materials * * * then its verdict must be one of not guilty" (*ibid*).

That Cain obtained $10,000 from Huebner in the summer of 1948 in order to "fix" Shotwell's tax case; that Cain told Huebner in the summer of 1948 he had been able to settle Shotwell's tax difficulties for a $20,000 deficiency, a plan which later went awry; and that agent Lima took preliminary steps to prepare a report for the settlement of Shotwell's tax deficiency in the amount of $20,000. (App. 1767–1768.)

That "fraud permeated the showing made by these * * * [petitioners] before me at the original suppression hearing, as well as at the trial and the supplemental hearing"; and, that "no honest, bona fide voluntary disclosure to any government official ever was made by Shotwell or these * * * [petitioners] with respect to Shotwell's 1945 and 1946 taxes." (App. 1770–1771.)

The court concluded, as a matter of law, that "dishonest and false disclosure cannot be held to be a timely voluntary disclosure" within the purview of the voluntary disclosure policy in existence at the time. (App. 1771.)

5. The evidence that there was no voluntary disclosure, but that there was, instead, a conspiracy to defraud the United States and to perpetrate a fraud upon the courts

Petitioners do not, in terms, challenge the sufficiency of the evidence to support the findings and conclusions below. They do, however, subject Judge Nordbye's order to indirect attack, attempting, throughout their brief, to cast a shadow both upon the findings themselves and upon the credibility of all adverse witnesses. To bring into sharper focus the central facts of this case, we shall undertake at this

point to summarize the evidence which sustains the findings and conclusions of the district court, affirmed without exception by the court of appeals. Viewed, as is proper, in the light most favorable to the government, that evidence is as follows:

(a) Evidence that the black market receipts were not offset by disbursements, as petitioners claimed, but, instead, had "stuck to [petitioners'] fingers"

At the supplemental hearing, Huebner testified that during the period of November 1944 to December 1946 (not merely September 1945–July 1946, as petitioners alleged), the Shotwell company received currency from Lubben for merchandise sold to him or his companies. The cash paid over by Lubben represented (i) premium payments in excess of the O.P.A. ceiling prices at which the merchandise was invoiced and (ii) payments for "unbilled shipments." Seventeen such payments were received by Huebner himself from Lubben or his agents, and other payments were received by Graflund, Roeser and Mrs. Morrill. The seventeen payments totaled approximately $300,000,[17] no part of which was expended by the corporation for the purchase of raw materials on the black market or elsewhere. Instead, Huebner turned the money over to Cain and Sullivan, except for $9,000 which he (App. 602, 629) retained for himself. In addition to the $9,000, Huebner received back from Cain $36,000. In all, therefore, Huebner received $45,000 of the Lubben money for his own

[17] The amount received in each of the years in question was as follows: 1944, $28,000 (App. 582-584); 1945, $101,000 (App. 586, 590-591, 598, 601-603); 1946, $171,000 (App. 618-619, 621-622, 624-632, 635-641).

use. The balance, roughly $250,000, went into the pockets of Cain and Sullivan. (App. 582–642, 1039–1042, 1323–1324, 1336–1339.)

Raw corn was the only commodity purchased by Shotwell on the black market. (App. 682, 1065–1067.) The black market corn "deals," all of which were arranged by Huebner, involved only three payees and, according to Huebner, were confined to the first six months of 1946, when there was a corn shortage. With two exceptions, the funds used for this purpose were the cash payments from Lubben which were received by Roeser, Graflund and Mrs. Morrill.[18] (App. 605–617, 872–873.) According to Graflund, the total amount paid out by the corporation for black market corn was estimated by Shotwell's officers at about $125,000. (App. 1065–1067.)

(b) Special Agent Krane's visit to the plant, and the aftermath thereof

The preceding evidence pertains to the period 1945–1946 and sustains the ultimate finding that petitioners' disclosures to the government were false in content. The evidence which will be summarized in the remainder of this Statement relates to the period commencing in June 1948 with Special Agent Krane's visit to the Shotwell plant. It is directly relevant to the question whether petitioners, throughout their dealings with Treasury officials, were committed to plans of concealment and fraud, rather than honest disclosure. Most of the testimony to which we refer was

[18] The two exceptions were some $14,000 withdrawn from the corporation's bank account and $2,000 received from Standard Glue Company for an unbilled shipment. (App. 609–617.)

given by Huebner, Graflund, and Lima at the supplemental hearing; the balance by Lubben and Samuel Davidson [Lubben's attorney] at the trial.[19]

On June 21, 1948, Special Agent Krane, Internal Revenue Service, went to the Shotwell offices in Chicago and asked Graflund, the Shotwell comptroller, for records relating to transactions with Lubben and Lubben's companies. Cain, Sullivan and Huebner on that day were attending a candy convention in New York City. In Krane's presence, Graflund called Cain and advised him of the request for records. Later in the day, Cain called Graflund to learn what information Graflund had given Krane and why he had done so. Sullivan also spoke with Graflund and asked why he had not demanded a subpoena. Both Cain and Sullivan seemed greatly disturbed and Cain seemed angry. (App. 1046–1047, 1232–1233.) On the same day, Cain told Huebner that he had received a telephone call from Graflund, that an Internal Revenue Agent was in the office at Chicago, that Graflund, "like a darned fool," had given the agent papers concerning Lubben's company and Shotwell, and that Cain and Sullivan had raised "particular hell" with Graflund for giving up the records. (App. 650–651.)

[19] Where the identity of the witness who gave the testimony summarized in the text is not otherwise apparent, it can be ascertained from the page reference. Huebner's testimony is at App. 561–983; Graflund's, at App. 1020–1344 (and his trial testimony at R. 1739–1798); Lima's, at App. 1344–1545 (original suppression hearing and trial testimony at R. 319–326, 2804–2807); Lubben's, at R. 787–1285; and Davidson's at R. 1313–1367.

On the same day (June 21, 1948), Cain, Sullivan and Huebner met with Pat Grace, a New York attorney. Cain told Grace that they were in trouble with Internal Revenue, that they had received black-market money from Lubben, and that some of it had "stuck to our fingers." Grace said that he had friends in Internal Revenue in New York and that he would find out what was going on. There was no mention of a voluntary disclosure at this meeting with Grace. (App. 651–653.)

The next day (June 22, 1948) Cain, Sullivan and Huebner met in New York with a Daniel Tobias, who said he had worked for Lubben, was then working for Internal Revenue, and could provide information as to what was transpiring in the New York Internal Revenue office with respect to Shotwell and Lubben.[20] Tobias wanted to be paid, and Cain promised to take care of him. (App. 654–656.)

Also on June 22, 1948, Cain, Sullivan and Huebner met with Ed Sproull, an accountant who retained some of Lubben's records. Cain arranged for Sproull to prepare a record of Lubben's transactions with Shotwell and to send it to Sullivan. Sullivan received records from Sproull shortly thereafter.[21] (App. 656–659.)

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[20] About a week before June 21, 1948, Tobias called Graflund from New York, said he had information concerning an investigation to be conducted of Shotwell, and wanted to talk with Cain. Graflund told this to Cain and gave him Tobias' telephone number. (App. 1050, 1070–1071.)

[21] Cain testified at the trial that Huebner, Sullivan and he met Ed Sproull in the "early part" of 1948 and received the figures from Sproull in the "first half" of the year. (R. 2557–2558.)

(c) The scheme to buy out Lubben

In the latter part of June 1948, within days after the New York candy convention, Cain arranged a meeting with Lubben at the Riviera night club in New Jersey. The details of the meeting, which was also attended by Pat Grace and by Sam Davidson, Lubben's attorney,[22] were revealed by the testimony of Lubben and Davidson at the trial (R. 962–968, 1321–1324). Apparently, Cain disclosed that Internal Revenue agents had visited the Shotwell plant; that Graflund, "like a damn fool," had given them records of dealings with Lubben; and that "All hell has broken loose." (R. 964.) In order to deprive the government of its key witness, Cain asked Lubben to go to South America for a couple of years, suggesting that a syndicate could be formed with Ed Urban of Close and Company and Morley Cramer (both of whom had black market dealings with Lubben), that the syndicate would buy Lubben's property, and that Cain would give Lubben a lucrative Shotwell account when he returned to the United States. Lubben was advised to obtain a passport, to think the matter over, and to contact Grace in a few days. Cain also indicated he was attempting to settle the case through political contacts, and Grace announced he would go to the

[22] At the trial, Lubben and Davidson testified the meeting was held around August 1948. (R. 963, 1321.) Cain and Grace testified it was in the latter part of June 1948. (R. 2558, 2077.) It clearly was held in June, for Cain told Huebner about it when Cain returned to Chicago from the candy convention. Moreover, on the Sunday after Huebner returned to Chicago from the convention (June 27, 1948) Cain called Huebner from New York and asked for Lubben's telephone number. (App. 659–661.)

office of Daniel Bolich, at that time in charge of the New York Office of the Internal Revenue Intelligence Unit.[23] (R. 962–968, 1321–1324.)

After Cain and Sullivan returned to Chicago from the New York candy convention, Cain asked if Huebner had reported any of the Lubben payments on his income tax returns. When Huebner stated he had not, Cain said "that was fine, that was good." (App. 661.) At about the same time, and repeatedly thereafter, Sullivan instructed Huebner and Graflund that they were not to give the investigating agents any information: "Tell * * * [them] you don't know anything"; that Cain "was to do all the talking"; and that they were to "Keep quiet * * * [about the] tax matter or we may all become more involved." (App. 662, 689–691, 1077–1078.)

On the first Sunday after Cain and Sullivan returned to Chicago from the candy convention (July 4, 1948), Cain invited Huebner and Graflund to his home for the purpose of discussing possible lines of action in response to Special Agent Krane's visit to the Shotwell plant.[24] They talked about the receipts from Lubben and about Lubben's and Shotwell's records, but no decisions were reached. Cain indicated they would have to assemble records to see what had

[23] Grace, who testified at the trial, stated that he had mentioned the case to Bolich at a casual street corner meeting but that he had never been in Bolich's office. (R. 2083, 2088–2089.) In rebuttal, the government proved that a Mr. Grace had visited Bolich's office on June 28, 1948, and that a Mr. Grace and a Mr. "Kane" saw Bolich on July 12, 1948. (R. 2799–2802; Govt. Exs. 188A–188C, Ex. Vol. I, pp. 119–121.)

[24] Sullivan came to this meeting late and stayed only fifteen minutes.

actually taken place between Shotwell and Lubben. There was no mention of voluntary disclosure at the meeting or that an Internal Revenue Agent was coming to the Shotwell plant to examine Shotwell's books and records. (App. 662–665, 1052–1054.) Prior to this meeting, moreover, neither Cain nor Sullivan had ever told Huebner that a voluntary disclosure had been or would be made,[25] or that records concerning Shotwell's transactions with Lubben were being or should be collected. (App. 664.)

Lubben's recollection was that Cain had indicated at the Riviera nightclub meeting that he would see the Urbans of Close and Company when he returned to Chicago. (R. 1102.) This task, however, apparently was delegated by Cain to Sullivan. Shortly after the July 4, 1948, meeting in Cain's home, Sullivan and Huebner joined Ed Urban[26] at the Chicago Athletic Club, in a meeting arranged by Huebner at Sullivan's instructions. Sullivan asked Urban what he thought of forming a group with Shotwell and Morley Cramer[27] to buy Lubben's business interests, obtain his records and "do whatever we wanted with them." Nothing was said about voluntary disclosure at this

[25] At the original suppression hearing both Cain and Busby testified that Huebner participated in the alleged decision to make a disclosure in January 1948. (R. 176, 228–229.)

[26] Edward Urban was not available to give testimony at the second suppression hearing because he had suffered an acute cerebral hemorrhage and was hospitalized. (App. 1190.)

[27] Morley Cramer, president of Gum Products Company and Two-Star Confections in Boston, had received premium cash payments from Lubben. Lubben also had made over-ceiling payments to Close and Company and Edward Urban. (R. 1015–1017.)

meeting. (App. 665–666.) At about the same time, Cain arranged for an appraisal to be made of Lubben's factory in New Jersey. (App. 666–667.)

(d) Circumstances surrounding the "voluntary disclosure"

Subsequent to the Riviera night club meeting in the latter part of June 1948, Davidson tried on two or three occasions to call Pat Grace. When an appointment finally was arranged, and a meeting held in Grace's office, Grace said that Cain "had decided to make a voluntary disclosure" and that Lubben, who already had applied for a passport for South America, could forget about leaving the country." (R. 1092–1096, 1178, 1345–1346.)

In the middle of July 1948, Cain told Huebner, Gratlund and Roeser that they were going to meet at the Belden-Stratford Hotel to work out a disclosure. Gratlund was directed to bring to the hotel all the invoices, bills of lading, and papers on Lubben's companies. At the hotel meeting, which lasted several days, Cain, Huebner, Gratlund and Busby worked up computations (Deft. Ex. 1, suppression hearing, R. 3091–3095) of the over-ceiling cash receipts from Lubben. Huebner brought to the meeting certain records he had obtained from Lubben in February 1948.[29]

[28] Grace fixed the date of this meeting as July 15, 1948, at 3:30 p.m. (R. 2080.)

[29] After Cain learned that Lubben had maintained records of the cash payments, contrary to petitioners' instructions (R. 862–863; App. 624–626), Sullivan sent Huebner to get the records from Lubben in February 1948. Unknown to Huebner, Lubben first had the records photostated and then delivered them to Huebner in Chicago. Huebner kept them in his desk drawer from February to July 1948. (R. 866–868, 1046, 1314–1317; App. 643–650.)

Prior to that time, Graflund had not been asked by anyone to assemble or furnish any records or data relating to the black market receipts from Lubben. He knew of nothing previously done by Busby in regard to a disclosure to the government. (App. 667–669, 673–680, 1054–1070.)

Shortly after the Belden-Stratford Hotel meeting, Cain wrote out on a sheet the alleged black-market payments made by Shotwell (Deft. Ex. 16, suppression hearing, R. 3174) to offset the black market receipts.[30] He did this in three to five minutes without referring to any records or asking Huebner for any information. Giving the sheet to Busby, Cain said, "Here are the figures. Go by it." (App. 680–683.)

Either at the Belden-Stratford Hotel meeting or shortly thereafter, Cain disclosed that he had talked with Sauber concerning Shotwell's tax situation, and had told him, in substance, "Ernie, if it will help any, why don't we fix March 17 as the date, St. Patrick's day? That is an easy date to remember." (App. 1068–1069, 1242.)[31]

In late July or early August 1948, Cain told Huebner that everything was settled, that he had made a disclosure to Sauber, and that the disclosure date was June 15, 1948.[32] (App. 688–689.) After hearing

[30] Cain testified at the trial that he wrote out the figures on disbursements for raw materials in the "early part" of 1948. (R. 2585–2586.)

[31] Sauber adhered to this date in his testimony at the original suppression hearing. (R. 281–284.)

[32] This date is six days before Special Agent Krane asked for records of transactions with Lubben and five months subsequent to the date petitioners ultimately contended they had made a disclosure.

Sauber testify as a government witness at the first suppression hearing, contradicting the testimony of Busby and Cain as to the January disclosure date. Huebner asked Cain how Sauber could testify that the date was March 15 when Cain had said the disclosure date was supposed to be June 15. Cain said, "Shhh, nobody knows anything about this. Keep quiet." (App. 691.) Shortly thereafter, Busby told Huebner that (App. 692) "Sauber would not go back of March the 15th, 1948, for the disclosure date."

(c) The abortive plan to "fix" Shotwell's taxes

Gratfund took a Wisconsin vacation the last week of July and the first week of August 1948. Shortly before his departure, but after the Belden-Stratford Hotel meeting, Cain told Huebner and Gratfund he could settle the tax case for $20,000. This conversation occurred before any audit had been made of the Shotwell tax returns. (App. 683-685; 1071-1073.) In the first week of August 1948, Cain informed Huebner he had settled the tax case for a $20,000 deficiency, and the latter, by long distance telephone, relayed the

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Sauber could not go back of March 15, 1948, because he had committed himself to that date in a statement to Special Agent Krane on October 16, 1951, and in a prior statement to Revenue Agent Mammel. (Def. Ex. 3, suppression hearing, R. 3454.) Petitioners had to go back to January 1948 as a disclosure date. Cain had been in California during February and had not returned to Chicago until March 3. And they had learned that an informer was in the New York Internal Revenue office about March 3 or 4, 1948. (App. 924-926.) Their information was correct, for on March 4, 1948, an informant wrote a memorandum for the Internal Revenue Service, stating that Shotwell had received a large amount of cash premiums from Lubben. (R. 334-338; Govt. Ex. 5, suppression hearing, R. 3088.)

news to Graflund. (App. 686–687; 1073–1074.) When Graflund returned from vacation after the first week in August 1948, he told Cain that Busby was to be congratulated for getting such a favorable tax settlement. Cain shook his head and said that he, Cain, was the one to be congratulated. (App. 1074.)

Earlier, in July 1948, Cain had told Huebner he had to have $10,000 to take care of the tax trouble and that he had to get it from Huebner. Asked why a Shotwell check wasn't adequate for the purpose, Cain replied that a check could be traced. A few days later, Huebner gave $5,000 to Cain, who said, "I have got good news. I am going to be able to fix the tax case." (App. 684.) In August 1948, Cain told Huebner he had to have the other $5,000 (of the $10,000 to fix the tax case) that day, and that he was meeting someone at the Chicago Athletic Club. Huebner obtained the $5,000 and gave it to Cain at the office. The telephone rang and a Mr. Kennedy asked for Cain. Cain took the telephone and arranged to meet the caller at the Chicago Athletic Club in about half an hour. Cain told Huebner that Kennedy "was the in-between man who was taking care of our tax fix" and that he was going to meet him to give him the money. (App. 687–688.)

At the original suppression hearing, Sauber testified that about 30 days after his initial meeting with Cain, the latter called him to request that he arrange an audit of Shotwell's returns. (R. 285–286.) Sauber then called Ralph Johnson, a group chief in the Revenue Agent's Office, and asked him to have

the audit made.[34] The 1946 return was officially assigned by Group Chief Johnson to Internal Revenue Agent Lima on July 30, 1948. (App. 1345–1346; Deft. Ex. 15, suppression hearing, R. 3173.) In connection with the assigned audit, Lima, who had no knowledge that a purported disclosure had been made (App. 1348), spent only a few days at the Shotwell offices during the first week of August 1948 (App. 684–685, 1072–1073), at which time Busby gave him the summary sheet reflecting Shotwell's black market receipts and alleged offsetting disbursements for the years 1944, 1945 and 1946 (Deft. Exs. 1 and 13, suppression hearing, R. 3096, 3171; Govt. Ex. 186, Ex. Vol. I, p. 117; R. 188–189, 216, 310–324, 2804–2810.) On instructions from Group Chief Johnson, Lima took preliminary steps to prepare a report which would allow all the offsetting disbursements except the items for "sales expenses and unallocated," which amounted to $18,000 for 1945 and $20,661 for 1946, and resulted in a tax deficiency of approximately $20,000. (App. 1522–1523, 1528–1529; Govt. Ex. 186, Ex. Vol. I, p. 117.) This preliminary report was submitted to Group Chief Johnson for approval and returned to Lima with directions to hold it in his files. Some time later, Johnson and Lima, along with Special Agent Krane, attended a meeting in the office of Ray Williams, Chief of the Fraud Squad. No mention was made at this meeting of Lima's report

[34] Johnson did not have the Shotwell returns in his group for examination until July 21, 1948. The 1946 income tax return of Shotwell was assigned to Group Chief James Granahan for field investigation on December 16, 1947. The return was sent to Group Chief Johnson on July 21, 1948. The 1945 Shotwell income and excess profits tax returns had been audited and a report submitted on August 5, 1947. (R. 308–318, 389–393.)

or the proposed $20,000 settlement. Williams and Johnson disagreed as to how the case should be handled, and Williams told Lima to hold the matter in abeyance until he received further word from Williams. Subsequently, in the latter part of September, Johnson informed Lima that a fraud investigation was definitely scheduled, that the Intelligence Division had entered the case, and that Lima might as well tear up the preliminary report. He did so. (App. 1344–1368, 1532–1533.)

In late September or early October 1948, Busby told Huebner that there had been a meeting at the Fraud Section of Internal Revenue, that "hell had broken loose," that "the boys had a heck of time destroying the records for the purpose of billing Shotwell for taxes," and that the Intelligence Division was getting back into the case again. (App. 689.) Gratlund heard the same thing from Busby. (App. 1074–1075.)

In the latter part of 1948, Cain twice directed Gratlund to destroy the "corn box" record kept by Mrs. Morrill and also any related records. (R. 1743–1744; App. 1075–1077.) Late in 1949, acting upon Cain's instructions, Gratlund destroyed cost records which showed a discrepancy between inventory tonnage and the tonnage of finished products. Cain's instructions were to destroy anything of an "incriminating nature." (App. 1078–1082.)

Beginning in late 1949, Cain and Sullivan repeatedly objected to the Internal Revenue Agent in Charge concerning the investigation. Asked to whom they made the alleged black market expenditures, Sullivan

first said he knew, but wouldn't tell, and later said he didn't know." (R. 238–241; App. 1001–1003.)

In August 1951, Cain had a conversation in New York with Lubben and Davidson, in which he told them that Agents Krane and Mammel, who were conducting the investigation of Shotwell, were coming to New York to ask Lubben about "loans and exchanges" with Shotwell.[5] Lubben told Cain that he had no such transactions with Shotwell. Nevertheless, Cain urged Lubben to lie to the agents and tell them that such transactions had taken place. (R. 971.) "what difference does it make, Dave? I am trying to settle this case. * * * it doesn't mean anything to you * * * You are not liable. * * * It just reduces my tax liability." (R. 968–974, 1324–1328.)

SUMMARY OF ARGUMENT

I. The central issue in this case is whether petitioners are entitled on Fifth Amendment grounds to the suppression of the documents they delivered to the government—in reliance, they say, upon an offer of immunity—even though the record conclusively shows not only that petitioners flouted the conditions of that offer, but also that their disclosure was but a further step in a conspiracy "to fix" Shotwell's tax difficulties. Petitioners rest their argument for suppression primarily upon the dictum in *Bram* v. *United States*, 168 U.S. 532, that a confession induced by a promise of benefit to the maker is not the product of free choice

[5] "Loans and exchanges" were transactions in which one type of merchandise was exchanged for another. (R. 971.) They are frequently referred to in the record as "trade deals." (See, *e.g.*, R. 2007–2008.)

and hence, if used in evidence against him, would violate his privilege against self-incrimination under the Fifth Amendment. That Amendment specifically refers to a person "compelled" to be a witness against himself. It is inconceivable, however, that the rule barring the use of involuntary confessions should operate to exclude a declaration in which damaging admissions are inextricably intertwined with false self-serving exculpatory statements, submitted in an effort to exploit a conditional offer of immunity while continuing the original evasion of taxes and penalties whose payment was a condition precedent to the immunity offered.

We challenge the assumption that the disclosure here was, in any meaningful sense, "induced" by or made "in reliance" upon the government's offer of immunity. Where an offer promises a benefit only if certain conditions are met, an individual who schemes to avoid those conditions cannot claim that he is acting in reliance upon the offer merely because, by fraudulently feigning compliance, he attempts to reap the offered benefit. Such a person knows that the government is not promising immunity for fraud, but for the truth, and that if his deception is unmasked, he will be subject to prosecution. Therefore he does not rely upon the offered immunity.

The purpose of the voluntary disclosure policy was to make it possible for the government to collect taxes and penalties that might otherwise be recovered only through costly investigation. To that end, the Treasury Department offered an immunity from criminal prosecution to any taxpayer who came forward in good faith, before investigation had been

initiated, and made a complete and honest disclosure of all relevant facts. Nothing in the text or context of the Treasury Department's policy statements could possibly have justified any taxpayer in assuming that immunity from criminal prosecution would be extended to anyone who not only failed to cooperate in determining the true tax liability but who (as the trial court found) seized upon the disclosure policy as an opportunity to perfect concealment of true tax liability. If, under these circumstances, petitioners were still willing to hazard a disclosure, their reliance was not on the government's promise, which could not be operative as to them, but rather on the likelihood that the fraud would not be discovered. Their position, therefore, is no better than that of the ordinary suspect, to whom no promise of any kind is made, but who volunteers a confession upon a calculation that it will gain him lenient treatment.

This Court has made it quite clear that the confession which the Constitution requires to be suppressed is one which law enforcement officials extract from the maker through methods which overcome his will to resist, exploit his helplessness, or disable him from making a free choice. Here, it was not the government which sought to take advantage of the petitioners but petitioners who baited a trap for the government. Petitioners were not held in custody, interrogated, or even approached by any government agent prior to their disclosure. They were not accused of any wrongdoing. The conferences at which petitioners allegedly made the disclosure to Sauber, the government representative, were arranged at *their*

initiative, not his. This is not a case, moreover, in which a promise was made by a specific law enforcement officer to a specific person suspected or accused of having committed a specific crime. If the government exerted any influence at all on petitioners, it was solely through the medium of general statements of policy addressed to the public at large and having no reference to any specific person or situation. Plainly, this is not a case which defendant's "will has been overborne and his capacity for self-determination critically impaired." *Culombe* v. *Connecticut*, 367 U.S. 568, 602. Indeed, it would be difficult to imagine a declaration more patently the "product of an essentially free and unconstrained choice" than this one.

Moreover, it is surely not irrelevant to these considerations that the self-serving false statements here intertwined with the admissions were themselves criminal acts. The attorney-client privilege, for example, does not extend to communications made in the perpetration of a crime or fraud, or in the course of a conspiracy to commit one. So here, it is submitted, the privilege against self-incrimination should not extend to admissions contained in the same "package" with self-serving false statements made to continue and compound the original felony of tax evasion which was the subject of the admission.

We wish to emphasize that it is not our position that the admissibility of an inculpatory statement turns on its truth or falsity or the purity of the motives which impelled it. For example, a suspect who is subjected to intense psychological pressure by an over-zealous policeman and who confesses in order

to extricate himself from his predicament would obviously be entitled to the exclusion of that confession even though it may have been false and intended to deceive. But the rule which privileges a confession made in those circumstances certainly should not privilege a self-serving declaration which is initiated entirely by the maker himself; which is not in any real sense the product of reliance upon a commitment by the government; which is a further act in a continuing conspiracy to defraud the government of taxes; and which is itself a criminal act.

One final point should be mentioned. Petitioners argue that the false disbursements figures were immaterial to the corporation's tax liability, since under the then existing Treasury policy over-ceiling disbursements were disallowed in computing cost of goods sold. The suggestion that these fabricated figures were without legal significance is readily laid to rest: If the amounts were expended for inventory, there was a colorable claim that they were cost of goods sold. If, on the other hand, as the courts found, a substantial portion was a constructive dividend to executive stockholders, there would be no rational basis for a deduction and taxable income would be (and was) materially misrepresented.

II. In his opinion following the supplemental suppression hearing, Judge Nordbye—though finding the evidence "overwhelmingly clear" that black-market sums totalling between three and four hundred thousand dollars had been paid to Shotwell and the greater part of it appropriated by the individual petitioners for their own personal use—made the re-

mark that it was entirely probable that "Lubben may have exaggerated" the amounts of his payments. (Lubben, the government's key witness at the trial, had testified that he paid Shotwell $454,000 in black-market cash in 1945 and 1946.) Solely on the basis of this remark, petitioners, attributing to Judge Nordbye a "finding" that Lubben lied to the jury, demand a new trial. To characterize the court's comment as a "finding," however, grossly distorts its significance. At the outset of the supplemental hearing, Judge Nordbye made it clear that he was not going to retry any issue already presented to the jury. Moreover, the import of his remark, if read in context, is that, taking account of the possibility, in view of the lapse of time and the absence of records, that a government witness at the trial may have exaggerated and allowing, as it were, a margin for error, it was still overwhelmingly plain that petitioners had appropriated to their own use hundreds of thousands of dollars in black market money. Petitioners would now turn the judge's very moderation and judiciousness—his allowing for the possibility of exaggeration—into a "finding" that the government's case was tainted, whereas in fact his only findings of fraud and bad faith are those which lie heavily at petitioners' door.

Moreover, there is no basis whatever to petitioners' further contention that the evidence at the supplemental hearing showed Lubben to be a perjurer. In fact, far from discrediting Lubben's trial testimony, the evidence at the supplemental hearing powerfully corroborated it.

III. There is no merit to petitioners' charge that the representations made and affidavits sponsored by the government in this Court were found by the district court to be false, or that they were improper inducements to this Court's decision to remand the case for further proceedings. The principal affidavits presented to this Court by the government were those of Graflund, the Shotwell comptroller, and Huebner, the company's vice-president and plant manager. In addition, the government anticipated for the Court the testimony which Lima, the revenue agent who audited the company records, would give as a government witness at the supplemental hearing. From the record and findings at the supplemental hearing, two salient facts emerge: *First*, the government's three principal witnesses gave precisely the testimony which, this Court was advised, the government anticipated. *Second*, in the several volumes of testimony foreshadowed in the briefs and affidavits the government submitted to the Court, only a single assertion by a single witness was found by the trial judge to be inaccurate. And even that one inaccuracy, the judge found, was made innocently and in good faith.

Petitioners further allege that the government concealed from this Court certain prior inconsistent statements having a material bearing upon the credibility of the witnesses whose testimony it promised to produce. That allegation is wholly unwarranted. Plainly, the government was not asking the Court to resolve the factual issue raised by its new evidence

or to pass judgment upon the credibility of the witnesses. The purpose of the motion to remand was simply to bring to the Court's attention new evidence which, if believed by the trial court after being exposed to cross-examination in *that* forum—would support findings that the purported voluntary disclosure had been untimely and/or devoid of good faith. Moreover, even if this Court *had* been disposed to weigh the credibility of the government's proposed testimony—a fanciful premise—it would not have been assisted by a bare concession that this testimony would in certain respects deviate from previous testimony of the witnesses. A determination of a witness's credibility requires the fullest exploration of details and an appreciation of every nuance in his story. We fully agree that the government has an obligation to volunteer all relevant information and must err on the side of excessive candor, but the obligation is to help the Court administer justice. Here the test of helpfulness to the Court certainly did not require counsel to bring forward the possible weaknesses in the newly discovered evidence. Indeed, disclosure would have opened up more questions than it solved. If counsel mentioned these "weaknesses", would they not be guilty of half-truths if they failed to explain everything else that might be said against the evidence? If government counsel were to begin to report and appraise the weaknesses in the newly discovered evidence, they would also be warranted in describing all the corroborative information. Manifestly, all this would be quite collateral and unneces-

sarily burdensome because the veracity of the projected testimony was not then in issue.

Furthermore, even if it be supposed that counsel erred in failing to refer to the impeaching material, the worst that can be said is that they committed an error of judgment while acting in good faith. Such a mistake, even if it occurred, would not vitiate the careful findings of the district court made after a full review of all the relevant evidence.

Once the suppression hearing had commenced, government counsel were entirely cooperative in making available to the petitioners all of the prior statements and grand jury testimony of the government's witnesses, and indeed earned an accolade from Judge Nordbye for their "forthright attitude" and "commendable frankness" in this regard. (App. 1770.)

IV. In March 1958, more than four years after the verdicts, petitioners filed motions seeking dismissal of the indictment, a new trial, and other relief on the ground that the grand and petit juries were illegally selected because (1) the Jury Commissioner delegated his duties to one of his private employees; (2) volunteers were permitted to serve on the juries; and (3) the Clerk of the District Court used no method calculated to secure a cross-section of the population, but merely selected names from lists of private organizations and upon nominations of former jurors.

In an extensive opinion, Judge Nordbye held that any right to challenge the jury trials had been waived, that petitioners had made no showing which would warrant granting them relief from the waiver, that the juries in fact were not illegally constituted; and

that there was no illegal delegation of the Jury Commissioner's duties. The court, we submit, was right on all counts.

The short answer to petitioners' contentions is that they waived any right they may have had to question the method of choosing the grand and petit jurors. With respect to the grand jury, this conclusion is compelled by numerous authorities, as well as by Rule 12(b) of the Federal Rules of Criminal Procedure, which provides explicitly that objections based on defects in the indictment, unless raised by motion before trial, are waived. It is well settled, moreover, that a contention that a petit jury was not lawfully constituted, or that the panel was improperly selected, comes too late when made after the verdict. As Judge Nordbye observed, petitioners are attempting to challenge the jury panels in a collateral proceeding under the guise of newly discovered evidence. They face the obstacle, however, that a motion for new trial on the basis of newly discovered evidence must be supported by a showing that the evidence could not have been uncovered with due diligence at an earlier date. Here there is no question that the officials who selected the jury were available for examination at all times, and, of course, the fact that some of the members of the panel were volunteers could have been ascertained at the time the petit jury was constituted.

Moreover, petitioners have made no showing which would justify the court in granting them relief from this waiver. They do not contend that any irregularities in the selection process resulted in prejudice,

nor do they show that the membership of the grand jury was unrepresentative of the community at large. And, as the court found, the method of selecting jurors in the Northern District of Illinois had been followed for years, and an inquiry as to the system employed could have been made at any time.

V. The contention that the court improperly permitted the jury to consider the disclosure documents against Sullivan is frivolous. These exhibits were admitted only against Cain and the corporation, and the jury was instructed that any "statement or act of one of the defendants not in the presence of another defendant is not binding upon the absent defendants." In any event, Sullivan has no standing to object to this instruction, since he joined with the other defendants in *requesting* an instruction under which the jury might consider, on the issue of intent, the actions of the defendants pursuant to the voluntary disclosure policy.

ARGUMENT

I. No constitutional or other rights of petitioners were violated by the admission into evidence of documents they submitted to the government pursuant to a conspiracy on their part to defraud the United States and evade taxes

The central issue in this case [*] is whether petitioners are entitled on Fifth Amendment grounds to the

[*] Petitioners have apparently abandoned their contention (Pet. 7, 35–36) that they should have had a jury trial on the suppression issue. In any event there was no merit in it, for both at the pre-trial suppression hearing (R. 126) and at the trial (R. 2739, 2741, 3209–3210), petitioners waived submission of the issue to the jury and asked that it be decided by the court. Nor did the petitioners request any instruction under

suppression of the documents they delivered to the government—in reliance, they say, upon an offer of immunity—even though the record conclusively shows that petitioners not only flouted the conditions of that offer, but also made their disclosure as a step in a conspiracy to "fix" Shotwell's tax difficulties by continuing and perfecting the original tax evasion.

The principal documents sought to be suppressed are government Exhibits 185, 186, and 189A–E. Of these, the most important is Exhibit 186 (Pet. 85; Ex.

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which the jury would have been permitted to consider the admissibility of the disclosure materials. (R. 3198–3215.) This Court, in its opinion remanding the case to the District Court for *judicial* resolution of the suppression issue, declared (at 355 U.S. 244, fn. 19):

"Respondents did not urge below, nor do they suggest here, that the question of admissibility of the disputed evidence was properly an issue for the jury. Rather their contention has been that the judge should have sustained the motion to suppress."

Petitioners raise a new [illegible] that they should have had a jury [illegible] issue of immunity from criminal prosecution. That issue was not presented in the petition, nor, we submit, [illegible] any of the questions there presented. Moreover, the issue was raised in the Conditional Cross-Petition for a Writ of Certiorari No. 47, (Oct. Term, 1955), as to which certiorari was denied (352 U.S. 998), thus leaving in force the Seventh Circuit's holding that petitioners are not entitled to immunity.

Apart from these special "disclosure" documents, the government also introduced at the trial ordinary corporate records of various kinds, and these are also embraced in petitioners' motion to suppress. However, the Fifth Amendment's privilege against self-incrimination does not protect either the corporation or its officers with respect to such corporate records. *Rogers* v. *United States*, 340 U.S. 367, 371–72; *United States* v. *White*, 322 U.S. 694, 699, 704.

Vol. I, p. 117), the summary prepared by Busby and handed over to Lima on the first day of his visit to the Shotwell plant in early August 1948. This document shows both the unreported black market income received from Lubben during 1945 and 1946, in the amount of $366,000, and the fictitious disbursement figures prepared by Cain, resulting in a "terminal" balance of $5,898. Exhibit 189A E (Pet. 86-90; Ex. Vol. I, pp. 122-126), is comprised of the work sheets prepared by Busby in arriving at the $366,000 figure shown in Exhibit 186, and was given to Special Agent Krane in August 1948.* Exhibit 185 (Ex. Vol. I, p. 116) consists of Cain's handwritten draft of false disbursement figures, which he prepared in July in "less than a minute", (*supra*, p. 16), and which was turned over to Krane at a date not specified in the record. (R. 398.) Exhibit 185 was admitted against Cain and the corporation during the cross-examination of Cain (R. 2587-2589); Exhibits E 6 and 189A E were received in evidence against Cain and the corporation during the government's rebuttal case (R. 2811-2812, 2817).** None of these documents was admitted against Sullivan. (R. 2589, 2611, 2812, 2817.) A portion of Cain's testimony at the suppression hearing, largely

*Busby testified at the original suppression hearing that he had delivered these documents to Krane on August 1, 1948. In fact, however, the date must have been somewhat later, since there is no evidence in the record that Krane made a second visit to the Shotwell plant at any time prior to Lima's visit there in the first week of August.

**While we do not stand on the point, and while it is not essential to our argument, we suggest that the Fifth Amendment's privilege against self-incrimination, even if it were applicable to documents delivered to the government under cir-

paralleling the contents of the above documents, was read into evidence near the close of the government's case-in-chief. (R. 1941-1951.)

A. The fictitious disbursement figures had a material effect upon the corporation's tax liability and were not, as petitioners portray them, merely harmless balancing entries.

As a preliminary to their constitutional argument, petitioners seek to minimize the legal significance of the false disbursement figures. They take the position that it was immaterial to the corporation's tax liability whether the black market receipts were paid out for the purchase of black market raw materials, as they alleged in their disclosure, or taken as constructive dividends by petitioners themselves, since under then-existing Treasury policy [9] overceiling disbursements were disallowed in computing cost of goods sold, for the purpose of reducing gross receipts to gross income. Accordingly, they say, the admittedly fictitious disbursements were thrown into their disclosure merely to provide balancing entries for the receipts. (Br. 17, 23, 68.)

The suggestion that these fabricated figures were without legal significance is readily laid to rest. In the first place, at the time of the alleged voluntary disclosure, the tax status of purchase outlays in ex-

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cumstances such as those involved here, may not operate to prevent their introduction for purposes of impeachment or rebuttal. *Walder* v. *United States*, 347 U.S. 62, holds that evidence, though illegally obtained, is nevertheless admissible on the issue of petitioner's credibility if on direct examination he opens the door to such admission by "affirmatively resort[ing] to perjurious testimony in reliance on the Government's disability to challenge his credibility." (*Id.*, p. 65.)

[9] See I.T. 3724, 1945 Cum. Bull. 57.

cess of O.P.A. ceilings was an unsettled matter. The Commissioner's view that such expenses could not be included in the cost of goods sold was even then being challenged in the Tax Court, and a decision adverse to the government was handed down in December 1948.[9] Thus, if the amounts were expended for inventory, there was a colorable claim that they were cost of goods sold. If, on the other hand, as the courts found, a substantial portion was a constructive dividend to executive stockholders, there would be no rational basis for a deduction and taxable income would be (and was) materially misrepresented. Cf. *United States* v. *Regan*, 311 U.S. 513. Indeed, Cain according to his own testimony at the original suppression hearing (R. 232, 252), expressly advised Sauber in March 1948 that the corporation reserved the right to sue for a refund if petitioners concluded that the Government's disallowance of the overceiling disbursements was erroneous.

Secondly, the government's evidence, in the main accepted by the district court, established that petitioners were *not* prepared to pay the additional tax properly applicable to their unreported receipts, but instead were attempting to arrange with internal rev-

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[9] *Sullenger* v. *Commissioner*, 11 T.C. 1076. This decision was followed by a number of decisions to the same effect in the courts of appeals. *Commissioner* v. *Heininger*, 198 F. 2d 297 (C.A. 5); *Commissioner* v. *Jaminet*, 198 F. 2d 295 (C.A. 5); *Jones* v. *Hedges*, 198 F. 2d 544 (C.A. 10); *Commissioner* v. *Heineman*, 197 F. 2d 221 (C.A. 1). The Commissioner acquiesced in these decisions prior to the original hearing on the motion to suppress (see 1952 2 Cum. Bull. 7).

cruit agents an immensely favorable civil settlement whereby all but a small fraction of the alleged black market disbursements would, notwithstanding the Commissioner's policy, be allowed as deductions. Petitioners can scarcely be heard to say that the fabricated disbursement figures were immaterial to the corporation's tax liability because the Treasury would have disallowed such expenses, when in their case the local revenue agent agreed to accept the fraudulent representation that these were such expenses, to allow them as cost of goods sold, and thereby substantially "wash out" the petitioners' civil liability.

Thirdly, if the unreported black market receipts were washed out by unclaimed disbursements which petitioners had *believed* to be deductible, the government would gain the impression (albeit false) that petitioners had not willfully understated their taxable income, so that petitioners would be likely to escape the heavy civil fraud penalties, amounting to 50%, of the tax deficiency, which would otherwise have been assessed against them under Section 293(b) of the Internal Revenue Code of 1939. The fabricated figures were highly significant, legally and in money consequences.

One further point should be mentioned. Petitioners assert (Br. 69) that in making a disclosure with respect to the tax liability of the corporation, they were not obliged to "turn informer" on the persons who received the black market moneys, even if those persons were the individual petitioners themselves—*i.e.*, to apprise the government that they had received unreported personal

income in the form of constructive dividends of the Lubbgn moneys. It is one thing, however, merely to keep silent about the ultimate disposition of these corporate receipts. It is an entirely different thing to use the purported voluntary disclosure as the occasion and the vehicle for manufacturing and communicating affirmative misrepresentation, concocted, as the court found, for the express purpose of misleading the tax officials as to the corporation's tax liability (App. 1766) and having an inevitable tendency to impede the discovery of petitioners' own personal tax evasion.

The above considerations, we believe, thoroughly discredit the notion that the fabricated outlays to "nameless and faceless" people were merely innocent balancing entries, or indeed anything other than a calculated effort to defraud the government of taxes and civil penalties which petitioners rightly owed.

B. The admission of the disclosure documents did not violate any constitutional rights of petitioners

Petitioners take the position that the documents turned over to the government should be suppressed even though the disclosure may have been fraudulent and in bad faith. They rest this contention primarily upon the dictum in *Bram* v. *United States*, 168 U.S. 532, repeated in other cases,[*] that a confession induced by a promise of benefit to the maker is, *ipso facto*, not the product of free choice, and hence, if used against him, would violate his privilege against

[*] See, *e.g.*, *Hardy* v. *United States*, 186 U.S. 224, 229; *Wan* v. *United States*, 266 U.S. 1, 14; *Smith* v. *United States*, 348 U.S. 147, 150.

self-incrimination under the Fifth Amendment." This Court, however, has never suggested that an incriminating statement made in reliance upon a promise of immunity should be inadmissible under all circumstances and to every extent. See *United States* v. *Shotwell Mfg. Co.*, 355 U.S. at 248 (Mr. Justice Black dissenting). The rule barring the use of involuntary confessions evolved primarily for the purpose of protecting the individual against self-incrimination through untrustworthy confessions extracted from him against his will under physical and psychological pressures improperly exerted by the policeman and the prosecutor. No doubt the rule has other applications as well. But it is inconceivable that it should operate to exclude a declaration in which damaging admissions are inextricably intertwined with false self-serving exculpatory statements, submitted on the maker's own initiative in an effort to exploit a conditional offer of immunity while continuing

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Petitioners also invoke the common law rule of exclusion, as elaborated by Professor Wigmore. See 3 Wigmore, *Evidence* (3d Ed. 1940), § 822. Wigmore attributes to that rule the sole purpose of excluding confessions which are "testimonially untrustworthy." This Court, however, in decisions enforcing the due process clause of the Fourteenth Amendment, has made it clear that "The aim of the requirement of due process is not to exclude presumptively false evidence, but to prevent fundamental unfairness in the use of evidence, whether true or false." *Lisenba* v. *California* 314 U.S. 219, 236. See *Culombe* v. *Connecticut*, 367 U.S. 568, 583, fn. 25. It may be that the unreliability of forced confessions has been subordinated as a ground for their exclusion because of the protection afforded by the separate rule that a confession must be corroborated by independent evidence before it can support a conviction. See *e.g.*, *Opper* v. *United States*, 348 U.S. 84. Here, of course, the disclosures sought to be suppressed were overwhelmingly corroborated by independent testimony.

the original evasion of taxes and penalties whose payment was a condition precedent to the immunity offered.

We emphasize, moreover, that this is not a case in which a promise was made by a specific law enforcement officer to a specific person suspected or accused of having committed a specific crime." Whatever

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" Petitioners allege that Sauber assured both Busby and Cain that they would be entitled to the immunity offered by the Treasury's voluntary disclosure policy. (Br. 11.) And indeed Sauber himself testified at the original suppression hearing that he had told Cain "in my opinion this was strictly a civil case." (R. 285.) This assurance, however, was based upon Cain's representation to Sauber that "no one in Shotwell Manufacturing Company profited by these transactions." (R. 285.) Apparently neither Cain nor Busby advised Sauber of the amounts of the black market receipts and disbursements, but merely generalized that such transactions had been made. In his memorandum decision at the end of the trial, Judge Nordbye declared (R. 3246):

"* * * I am convinced from the evidence produced on the motion that no promise of immunity was held out to these defendants, or any of them, by any representative of the Government when these alleged disclosures were made, or at any other time. Moreover, I am satisfied that there were no representations by any Government representative which would lead these defendants to believe that the alleged disclosure would be considered a voluntary disclosure within the purview of the voluntary disclosure doctrine."

No further evidence as to communications between Sauber and Cain or Busby was given at the supplemental hearing. In his memorandum decision at the end of this hearing, Judge Nordbye found that Sauber probably "informed Cain and Busby that, if they made an *honest, bona fide voluntary disclosure*, there would be no criminal prosecution * * *." (App. 1761—emphasis added.) In short, Sauber's so-called "assurances" added nothing whatever to the general statements of the Treasury Department announcing the voluntary disclosure policy. Like those general statements, Sauber's assurances were based upon the assumption that the taxpayers would make a full, honest, bona fide disclosure of the facts relating to the corporation's tax liability.

may be the result in cases of specific coercion or inducement, we respectfully submit that concern about such cases should not bar introduction of fraudulent disclosures made in an effort to exploit a general statement of policy addressed to the public at large and having no reference to any specific taxpayer or specific case of tax evasion.

That the dictum in *Bram*, upon which petitioners rely, has no application to the facts of this case is further indicated by the following considerations:

1. We challenge the assumption that the disclosure here was, in any relevant sense, "induced" by or made in "reliance" upon the Government's offer of immunity. We do not deny that in turning records over to the government petitioners may have been prompted, in part at least, by the desire to avoid criminal prosecution. But where an offer promises a benefit only if certain conditions are met, an individual, scheming to avoid those conditions, cannot claim that he is acting in reliance upon the offer merely because, by fraudulently *feigning* compliance with the conditions, he attempts to reap the offered benefit. Such a person knows that the government is not promising immunity for fraud, but for the truth, and that if his deception is unmasked, he will be subject to prosecution. Therefore, he does not rely upon the offer of immunity.

The purpose of the voluntary disclosure policy was to make it possible for the government to collect taxes and penalties that might otherwise be recovered only through extended and costly investigation, if at all. To that end, the Treasury Department

offered an immunity from criminal prosecution to any taxpayer who came forward in good faith, before an investigation had been initiated, and made a complete and honest disclosure of all relevant facts. At the time of petitioners' disclosure, the most recent and authoritative statement of the Treasury Department's policy stressed that the offer of immunity "presumes, of course, that the repentant taxpayer cooperates with agents of the Bureau in determining the true tax liability." (Press release of Secretary Snyder's statement, issued May 25, 1947, R. 5141, Appendix, *infra*.) Other statements were less explicit. In any event, nothing in the text or context of the Treasury Department's policy statements could possibly have justified any taxpayer in assuming that immunity from criminal prosecution would be extended to one who not only failed to cooperate in determining the true tax liability, but who (as the trial court found) seized upon the disclosure policy as an opportunity to perfect concealment of the true tax liability. (App. 1762–1763, 1766.) If, under these circumstances, petitioners were still willing to hazard a disclosure, their reliance was not on the government's promise, which could not be operative as to them, but rather on the expectation that the fraud would not be discovered and that the half-truth disclosure would help prevent discovery. In essence, they stand in no better position than the ordinary suspect, to whom no promise of any kind is made, but who nevertheless volunteers a confession upon a calculation that it will gain him lenient treatment. No one has ever suggested that a confession motivated by such a calculation could not

be used in evidence against its maker, and, likewise, that suggestion must fail here.

While the precise point has never been decided,[45] several federal courts have considered the closely analogous question whether a taxpayer who purports to make a voluntary disclosure, in reliance upon the offer of immunity, although he knows that the policy is inapplicable because an investigation of his case is already underway, is entitled on constitutional grounds to have the disclosed documents excluded from evidence. Uniformly the decision has been that such documents are properly admitted.[46] The ration-

[45] However, in *Centpacchio* v. *Garrity*, 198 F. 2d 382, 389 (C.A. 1), certiorari denied, 344 U.S. 866, Judge Magruder declared, by way of dictum, that:

"* * * If it be assumed for the moment that evidence disclosed to the Treasury officials on the faith of the announced voluntary disclosure policy, and in compliance with its conditions, should be excluded from evidence in a subsequent criminal trial, *it would seem that the taxpayer would have to satisfy the court that he made a voluntary, good faith disclosure of all data necessary to a correct computation of his income tax deficiencies, and that he made such disclosures before an investigation was underway.*" [Emphasis added.] See also *Bateman* v. *United States*, 212 F. 2d 61, 65–66 (C.A. 9); *In re Monroe*, 110 F. Supp. 507 (N.D. Tex.).

[46] *White* v. *United States*, 194 F. 2d 215, 217–18 (C.A. 5); *Bateman* v. *United States*, 212 F. 2d 61, 65–66 (C.A. 9); *United States* v. *Lustig*, 163 F. 2d 85, 88–89 (C.A. 2), certiorari denied, 332 U.S. 775; *United States* v. *Weisman*, 78 F. Supp. 979 (D. Mass.). Indeed, the admission of the evidence has been upheld even where the defendant was *not* aware of the untimeliness of his disclosure, although there the result may be more doubtful. *Lapides* v. *United States*, 215 F. 2d 253, 256 (C.A. 2). *Contra*, *In re Liebster*, 91 F. Supp. 814 (E.D. Pa.). In still other cases where motions to suppress were denied, the

able which underlies these cases, though not fully spelled out in the opinions, is that a taxpayer who voluntarily turns documents over to the government, even though he knows that his disclosure does not meet the conditions of the Treasury's immunity policy, cannot afterwards be heard to say that he "relied" upon that policy and for that reason is entitled to the suppression of those documents. This principle, we submit, applies with equal force where the defect which vitiates the disclosure is not untimeliness, but fresh and material misrepresentation of taxable income.

We might add that *Rex* v. *Barker*, 2 K.B. 381 (1941), 3 All England Reports 33 (1941),[*] quoted at length in petitioners' brief (Br. 70–71), is entirely inapposite. That case involved the question whether certain documents produced by Barker in the course of an investigation by revenue agents were properly admitted in evidence against him. During the investigation the agents on two occasions read to Barker extracts from the so-called "Hansard statement," which, like the Treasury's voluntary disclosure policy in our case, held out immunity from prosecution to any taxpayer who "comes forward with a *full and frank disclosure*, of past frauds." [Emphasis sup-

court did not mention whether the defendant knew at the time he made the disclosure that it was untimely. See *Monroe* v. *United States*, 215 F. 2d 81, 84 (C.A. 5), affirming *In re Monroe*, 110 F. Supp. 507 (N.D. Tex.), certiorari denied, 348 U.S. 911; *United States* v. *Levy*, 99 F. Supp. 529, 533–34 (D. Conn.).

[*] The latter report is the more complete.

plied.]" The documents submitted by Barker after the first reading of this statement did not disclose the full extent of the fraud upon the revenue, and he raised no question as to the admissibility of *those* documents. After the second reading of the statement, Barker produced other documents which *did* disclose the full extent of the fraud, but were nevertheless admitted against him at the trial. His conviction was reversed on the ground that these latter documents fully disclosing the fraud should not have been admitted since Barker had produced them in reliance upon the promise or inducement expressly held out to him by the agent who read him the extract.

2. We assume that the constitutional prohibition against the use of involuntary confessions has the same scope when applied to State prosecutions under the Fourteenth Amendment as it does when applied to federal prosecutions under the due process and self-

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[48] Petitioners quote a portion of the "Hansard statement" at p. 70 of their brief. Immediately following the excerpt quoted by petitioners there is this language (2 K.B. at 382):

"Cases not infrequently arise in which the disclosure, though in a sense voluntary, is not made on the initiative of the taxpayer. For example, the taxpayer may have been requested to furnish accounts or further particulars in connection with accounts already rendered or the production of books may have been suggested. *If in such a case the taxpayer forthwith comes forward with a full and frank disclosure of past frauds, this would be accepted by the board as equivalent to a voluntary disclosure* to the extent that the board would not institute criminal proceedings, but would accept a pecuniary settlement." [Emphasis added.]

incrimination clauses of the Fifth Amendment." Decisions of this Court under the former clause emphasize that the confession which the Constitution requires to be suppressed is one which law enforcement officials extract from the maker through methods which overcome his will to resist, exploit his helplessness, or disable him from making a free choice. Such methods are offensive to the concept, basic to our judicial system, that "men are not to be exploited for the information necessary to condemn them before the law." *Culombe* v. *Connecticut*, 367 U.S. 568, 581.

This rationale is carefully spelled out in *Rogers* v. *Richmond*, 365 U.S. 534, 540-541, where the Court declared:

> Our decisions under [the Fourteenth] Amendment have made clear that convictions following the admission into evidence of confessions which are involuntary, *i.e.*, the product of coercion,

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"This Court recently pointed out that "the concepts underlying the rule excluding coerced confessions and the privilege against self-incrimination have become, to some extent, assimilated." *Culombe* v. *Connecticut*, 367 U.S. 568, 583, fn. 25. And in *Leyra* v. *Denno*, 347 U.S. 556, 558, fn. 3, the Court, referring to its "settled view * * * that coerced confessions cannot be admitted as evidence in criminal trial", announced that some members reached this conclusion "because of their belief that the Fourteenth Amendment makes applicable to the states the Fifth Amendment's ban against self-incrimination."

We recognize, of course, that this Court, through the exercise of its supervisory powers over the federal courts, may adopt rules of evidence for federal trials which are more exclusive than those which flow from the Fifth Amendment itself. See *Mallory* v. *United States*, 354 U.S. 449; *McNabb* v. *United States*, 318 U.S. 332. The circumstances of the present case, however, afford no basis whatsoever for the adoption of such a rule of evidence here.

either physical or psychological, cannot stand. This is so not because such confessions are unlikely to be true but because the methods used to extract them offend an underlying principle in the enforcement of our criminal law: that ours is an accusatorial and not an inquisitorial system—a system in which the State must establish guilt by evidence independently and freely secured and may not by coercion prove its charge against an accused out of his own mouth. * * * To be sure, confessions cruelly extorted may be and have been, to an unascertained extent, found to be untrustworthy. But the constitutional principle of excluding confessions that are not voluntary does not rest on this consideration. Indeed, in many of the cases in which the command of the Due Process Clause has compelled us to reverse state convictions involving the use of confessions obtained by impermissible methods, independent corroborating evidence left little doubt of the truth of what the defendant had confessed. Despite such verification, confessions were found to be the product of constitutionally impermissible methods in their inducement. Since a defendant had been subjected to pressures to which, under our accusatorial system, an accused should not be subjected, we were constrained to find that the procedures leading to his conviction had failed to afford him that due process of law which the Fourteenth Amendment guarantees.

More recently, in *Culombe* v. *Connecticut, supra*, at 602, the Court defined the test of admissibility in the following terms:

> * * * The ultimate test remains that which has been the only clearly established test in Anglo-American courts for two hundred years: the test of voluntariness. *Is the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he has willed to confess, it may be used against him. If it is not, if his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process.* * * * *The line of distinction is that at which governing self-direction is lost and compulsion, of whatever nature or however infused, propels or helps to propel the confession.* (Emphasis added.)

If the test of voluntariness has proved difficult to apply, it is because in nearly every decided case the confession was obtained under circumstances which were *inherently* coercive. In the typical situation, a person suspected of a crime is taken to the police station and there, while surrounded by hostile forces and isolated from his friends, he is subjected to more or less prolonged interrogation. When an individual stands helpless in that predicament, questions, exhortations, and even the suspicion of the authorities may have a tendency to sway his mind and numb his capacity for resistance. For example, in *Bram* v. *United State*, *supra*, upon which petitioners heavily rely, a person accused of murder was taken to a detective's office, questioned while stripped of his clothing, and tricked by the detective into making the statement which was later introduced against him as a confession. And in *Rogers* v. *Richmond*, *supra*, also cited by petitioners, a person accused of murder was

intermittently interrogated for six hours by a team of three police officers, and confessed only when the police chief indicated that he was about to have the prisoner's arthritic wife taken into custody."

The present case lies at the opposite pole from *Bram*, *Rogers*, and other cases where confessions were held to be involuntary. Here it was not the government which sought to take advantage of petitioners, but petitioners who baited a trap for the government. Petitioners were not held in custody, interrogated, or even approached by any government agent prior to their disclosure. They were not exposed even for a moment to the hostile and isolating atmosphere of a police station or other place of detention. They were not accused of any wrongdoing. The conferences at which Cain and Busby allegedly made the crucial admissions to Sauber were arranged at *their* initiative, not Sauber's. If the Treasury exerted any influence at all on petitioners, it was, as we have pointed out, solely through the medium of general statements of policy, addressed to the public at large and having no reference to any specific person or situation.[51] Plainly, this is not a

[50] The *Rogers* case simply stands for the principle that the courts, in passing upon the admissibility of a confession secured by improper means, may not take into account the likelihood that the confession is true. It has no bearing on the case at bar, where the overreaching and improprieties were committed, not by the government, but by petitioners, and where the fraudulent and self-serving character of the disclosure, for reasons given earlier, undercuts any contention that it was the product of reliance upon a commitment by the government.

[51] See *supra*, p. 59, fn. 44.

case in which the defendant's "will has been overborne and his capacity for self-determination critically impaired." *Culombe v. Connecticut*, *supra*. In fact, it would be difficult to imagine a declaration more patently the "product of an essentially free and unconstrained choice" than this one.

An entirely different question would, of course, be presented if petitioners had made a full, fair and timely disclosure and then been subjected to criminal prosecution. In that situation, even if it were held that the promise of immunity was legally unenforceable, petitioners, having relied in good faith upon the assurances of the Treasury, might be entitled to the exclusion of the disclosed documents. There, however, the reason for the exclusion would not be that the disclosure was extracted from the defendant against his will, but rather that it was elicited by the government through trickery and under false pretenses, official misconduct which the courts will not tolerate.[8] This is not such a case.

We wish to emphasize that it is not our position that the admissibility of an inculpatory statement turns on its truth or falsity, or on the purity of the motives which impelled it. For example, a suspect who is subjected to intense psychological pressure by an overzealous policeman and who confesses in order to extricate himself from his predicament would obviously be entitled to the exclusion of that confession even though it may have been false and intended to deceive.

[8] See *Crawford v. United States*, 219 F. 2d 207, 209-211 (C.A. 5). Cf. *Gouled v. United States*, 255 U.S. 298, 306.

But the rule which privileges a confession made in those circumstances certainly should not privilege a self-serving declaration which is initiated entirely by the maker himself; which is not in any real sense the product of reliance upon a commitment by the government; which is a further act in a continuing conspiracy to defraud the government of taxes; and which is itself a criminal act.[53]

3. The documents the petitioners seek to have suppressed can scarcely be deemed the products of compulsion, in the face of overwhelming evidence in the record that they were delivered to the government pursuant to a plan of still further tax evasion. Revenue Agent Lima appeared at the Shotwell plant in the first week of August to audit the company's records (see p. 39, *supra*). Up to that point, petitioners had not made available to the government any of the figures pertaining to their tax liability. Lima's arrival presented them with a clear and unfettered choice between two alternative courses of action. On the one hand, they could make a clean breast of their black market transactions, pay the taxes and penalties due on the unreported receipts, and thereby earn immunity from criminal prosecution. In the alternative, they could feed Lima the records containing the fictitious disbursement figures Cain had prepared in July, and thus sacrifice the carefully conditioned right to immunity, in an endeavor surreptitiously to escape criminal prosecution while evading the taxes [redacted] whose payment was a condition to the immunity right.

[53] See *infra*, pp. 71–72, fn. 54.

They freely chose the latter course. Even prior to Lima's visit, Cain told Huebner that he could settle the tax case for a $20,000 deficiency and, in another conversation, that he had to have $10,000 to take care of the tax trouble. And the same week in which Lima audited the corporation's records, Cain advised Huebner that a settlement on the basis of a $20,000 deficiency had been arranged. Meanwhile, acting under the instructions of his superior, and using the figures contained in Busby's summary, Lima took preliminary steps to prepare a report which contemplated the allowance of a deduction of virtually all of the fictitious black market disbursements, with a resulting deficiency of only $20,000. It was only when the Fraud Section intervened in the case in the latter part of September 1948 that this collusive settlement was thwarted and Lima's preliminary report ordered to be destroyed. (App. 685–686; 686–688; 1071–1074; 1344–1368; 1382–1533; *supra*, pp. 37–40.) In light of this unfolding pattern of fraud and connivance, aptly characterized by Judge Nordbye as Cain's "machinations" (App. 1768), it is absurd for petitioners now to seek refuge in the assertion that their disclosures were merely the product of reliance upon the Treasury's immunity policy.

4. It is surely not irrelevant to these considerations that the self-serving false statements here intertwined with the admissions were themselves criminal acts.[54]

[54] See *United States* v. *Beacon Brass Co.*, 344 U.S. 43 in which this Court held that the making of false statements to a Treasury representative in a willful attempt to evade taxes constituted a violation of Section 145(b) of the Internal Revenue Code of 1939. Such statements would also violate 18 U.S.C. 1001, the general "false statements" statute.

The attorney-client privilege, for example, does not extend to communications made in the perpetration of a crime or fraud, or in the course of a conspiracy to commit one.[55] So here, it is submitted, the privilege against self-incrimination should not extend to admissions contained in the same "package" with self-serving false statements made to continue and compound the original felony of tax evasion which was the subject of the admission.

II. Petitioners' convictions were not secured on the basis of perjured testimony by Lubben; nor did Judge Nordbye so find

Petitioners contend (Br. 3, 50, 62, 84–89, 111) that the district court should have granted a new trial because, they say, the court found on the supplemental hearing that Lubben had perjured himself at the trial as to the amounts of the payments made to Shotwell. This assertion, which was made repeatedly to Judge Nordbye after the supplemental hearing, is wholly without substance. Although this Court stated in its 1957 opinion in the instant case that the jury's "verdict clearly must stand or fall on the sufficiency of the evidence already introduced at the trial" (355 U.S. 233, 244), we agree, of course, that if it appeared at the supplemental hearing that the convictions had been secured on fundamentally false testimony a new trial should be ordered. No such finding, however, was made by Judge Nordbye, nor would the evidence at the suppression hearing have supported one.

[55] 8 Wigmore, *Evidence* (3d ed.), Sec. 2298; *Pollack* v. *United States*, 202 F. 2d 281 (C.A. 5), certiorari denied, 345 U.S. 993. Cf. *Clark* v. *United States*, 289 U.S. 1, 15 (dictum); *Alexander* v. *United States*, 138 U.S. 353, 360.

A. Judge Nordbye's comment on Lubben's trial testimony

At the trial, the government introduced evidence showing that the unreported income Shotwell received from Lubben in 1945 and 1946 amounted to about $454,000 (R. 1838–1840, 1844–1846, 2064–2066). The jury, of course, made no finding as to the total amount of the unreported income, and no judicial determination on this point has been made at any time.

In his opinion following the rehearing of the suppression issue, Judge Nordbye stated (App. 1758–1759):

> * * * that Lubben may have exaggerated the amounts of the payments that he and his confederates made to Shotwell is entirely probable. But the evidence is overwhelmingly clear that not only were substantial sums of black-market money paid to Shotwell as premium payments by Lubben during 1944, 1945 and 1946 totaling between three and four hundred thousand dollars, but also that the greater part of this so-called black-market money was appropriated by Cain, Huebner and Sullivan for their own personal use. * * *

Solely on the basis of this statement, petitioners attribute to Judge Nordbye a "finding" (Br. 86) that "Lubben lied to the jury to the extent of at least $132,000" (Br. 86). Such an allegation grossly distorts the significance of the court's remarks. Judge Nordbye did not purport to make any findings whatever as to the exact amount of money Shotwell received from Lubben. Indeed, at the very beginning of the supplemental hearing he made it clear that he was not going to retry issues that had been presented to

the jury. Government counsel immediately agreed, stating that the government proposed to adduce only evidence controverting the motion to suppress, that it had "no intention of ascertaining or asking this Court to ascertain what Shotwell's tax liabilities were, is or might have been," and that the government's evidence would go only to the good faith and the timeliness of the alleged voluntary disclosure. (App. 541.) Accordingly, neither the government nor the court attempted, during the proceedings on remand, to establish the total of Shotwell's black market receipts.

The court's comment as to Lubben's possible exaggeration is to be read in context. In its opinion (App. 1758), after noting that the events in question had taken place fourteen years earlier and that no record of the premium payments had been kept by Shotwell or any of its officers, the court said it was "perfectly understandable" that Huebner's memory might not be too clear as to the amounts of money received from Lubben, the disposition of the money, and the circumstances of the transactions. But, the court concluded, Huebner's testimony was "reasonably consistent and compatible with the testimony given by the Government witnesses at the trial regarding these payments." It was at this point that the court noted that, although Lubben may have exaggerated the amounts of the payments, it was "overwhelmingly clear" that Shotwell had received between $300,000 and $400,000 from Lubben in premium payments. In other words, it was the Judge's conclusion that, although Huebner and Lubben, because of the lapse of time and the absence of records,

may have been mistaken as to the precise amounts of money involved, they were generally in agreement, and the amounts were clearly very substantial.

We have here a case in which a most careful and conscientious judge, familiar with the case from its beginning, has stated that, taking account of the possibility that a government witness at the trial may have exaggerated and allowing, as it were, a margin for error, it was still overwhelmingly plain that petitioners had appropriated to their own personal use hundreds of thousands of dollars of black market money. Petitioners would now turn the judge's very moderation and judiciousness—his allowing for this possibility of exaggeration—into a "finding" that the government's case was tainted, whereas in fact his only findings of fraud and bad faith are those which lie heavily at petitioners' door.

B. Evidence at the suppression hearing bearing on Lubben's trial testimony

In a motion for a new trial filed after the supplemental hearing, petitioners alleged (App. 1775–1776) that it appeared from the government evidence adduced at the hearing, as well as from the court's findings, that the convictions were based upon false and perjurious evidence. In argument on the motion, petitioners contended that Lubben's books had been shown to be false; that the evidence at the supplemental hearing established that Lubben had perjured himself at the trial; and that the court itself had found that Lubben's testimony was perjurious. (App. 1781–1784, 1795–1796.) In denying the motion for new trial (App. 1796), Judge Nordbye rejected

all of these contentions. During the arguments, he noted that the supplemental hearing was not a retrial of the issues before the jury; that the only issue in any sense retried was the disposition of the Lubben payments, and that issue only insofar as it had a bearing upon the good faith of the alleged disclosure; that there was no variance between the evidence at the trial and the evidence at the supplemental hearing, except that it was now clear where the Lubben money had gone; and that he would grant a new trial if he thought there was a miscarriage of justice, but that he did not find that to be the case. (R. 1788–1791.)

There is no basis whatever for the contention that the evidence at the suppression hearing showed Lubben to be a perjurer. Huebner testified in detail at the supplemental hearing concerning 17 separate cash payments which he recalled receiving from Lubben or Lubben's agents. Those payments totaled about $300,000 of which only $28,000 was received in 1944, and the remaining $272,000 in 1945 and 1946. All of the $300,000 was divided among Cain, Huebner and Sullivan. Huebner was not asked at the hearing, and did not indicate, whether the 17 payments he specifically identified were the *only* ones he had received. In any case, Huebner was not the only recipient of Lubben's cash. Other payments from Lubben were received by Roeser, Graflund and Mrs. Morrill, placed in a "corn box" or a safe deposit box, and, for the most part, expended for raw corn. How much money these three received is undetermined, since records relating to those receipts were destroyed upon Cain's instructions. At the trial, however,

Graflund estimated the amount at $80,000. (R. 1747-1748.). At the Belden-Stratford Hotel meeting in July 1948, the company officials estimated that about $125,000 in currency had been disbursed for corn. (App. 1065-1066.) And in his argument to the court following the supplemental suppression hearing, counsel for petitioners stated that the money which Shotwell received and which went into the "corn box" was (App. 1681) "a figure of one hundred and twenty-five to one hundred and fifty thousand dollars—whatever you want to name it—no one can say with precise precision." (App. 1676-1681.) If the $272,000 received by Huebner in 1945 and 1946 and pocketed by the defendants is added to the $125,000-$150,000 which found its way into the "corn box," the total is not far removed from the $454,000 which Lubben claimed he had paid. Thus, the record of the supplemental hearing does not discredit, but, on the contrary, powerfully corroborates Lubben's testimony.

Huebner may have contradicted Lubben on certain details, but even as to them the conflict was not as sharp as petitioners portray it. Petitioners allege (Br. 51, 85) that Huebner, contrary to Lubben's testimony, denied at the hearing that Lubben had paid overages of $40,000 in connection with the sale of chocolate-covered nuts. Examination of their record reference (App. 797-800) indicates, however, that Huebner never actually responded to the question about chocolate-covered nuts. Petitioners also allege (*id.*) that Huebner testified Lubben lied concerning an item of $49,000 paid to Graflund. Actually, Huebner's testimony (App. 809) was that he "thought it

was a mistake on Lubben's part." Asked on cross-examination how many times he had told Cain's counsel that Lubben was a liar, Huebner replied (App. 809), "I thought he lied on the stand here," but petitioners failed to elicit any particular in which Huebner thought Lubben had committed perjury.

Similarly, petitioners claim (Br. 22, fn. 14, 85) it was established at the supplemental hearing that Lubben's records had been altered by Tobias to show as charges against Shotwell items that had been paid to other companies.[56] The only basis petitioners have for this allegation is Huebner's testimony that Tobias, upon meeting with Cain, Sullivan and Huebner in New York in June 1948, reportedly told them that he was working for Internal Revenue, that he had worked for Lubben, that he had helped Lubben alter the latter's books to charge over-ceiling payments to Shotwell, that he could keep petitioners informed as to what was going on in Internal Revenue, and that he wanted to be paid by Cain. (App. 655–656, 969.) The testimony of Huebner concerning Tobias' statements was nothing new, for Cain and Sullivan had given similar testimony at the trial.[57] (R. 2556–2557, 2678–2679.) This hearsay testimony as to what Tobias said falls far short of establishing (Pet. Br. 85) "without contradiction * * * that Lubben's purported records

[56] Petitioners also assert (Br. 85) that Tobias was a Treasury employee and was on the Treasury payroll. This allegation is not true.

[57] Cain testified that he asked Tobias to get evidence of the alleged alteration of Lubben's books and that he agreed to pay Tobias for the information. (R. 2556–2557.) Cain had Pat Grace pay $500 to Tobias. (R. 2085–2086, 2614–2615.)

which went to the jury had been 'doctored' (App. 969) by one Tobias."

We submit that petitioners have failed utterly to show Lubben's books or testimony to be false or perjurious and that the misstatements at the trial, as both the jury and Judge Nordbye found, were made by Cain and Sullivan, not by Lubben.

C. The evidence at the trial shows that it was Cain, not Lubben, who seriously misstated the amounts paid by Lubben

As we have shown in our Statement, *supra*, pp. 18–22, there was a sharp conflict between the trial testimony of Cain and that of Lubben as to the amounts of black market overages paid to Shotwell by Lubben and his associates. There is no need to repeat here the mass of evidence adduced by the government in support of the verdicts of guilty (*supra*, pp. 18–23). In view of its importance on the question of Lubben's alleged "perjury," however, as well as its bearing on the suppression issue, we shall discuss briefly certain details of the proof which show—conclusively, we believe—that it was Cain rather than Lubben who departed substantially from the facts.

It will be recalled that petitioners' defense at the trial (and, indeed, ever since) [58] was that Lubben had paid Shotwell cash overages for the purchase of black market corn, and that since there was no unreported income, and no tax deficiency owed by the corporation for either 1945 or 1946, petitioners could not have been

[58] See, *e.g.*, Br. 9–10, 22–24, 37, 51–52; App. 750, 953–954; Brief in Opposition to Certiorari (pp. 5–6) filed by the present petitioners in *United States* v. *The Shotwell Mfg. Co., et al.*, No. 470, Oct. Term, 1955.

guilty of wilfully attempting to evade the corporate taxes for those years. Cf. *Lawn* v. *United States*, 355 U.S. 339, 361. Cain testified that Lubben lied when he said the payment of cash overages had begun in 1944. Cain swore that in fact they had not begun until some time after September 29, 1945; that on that date Lubben agreed to pay 3 cents per pound in cash over the invoice price on "gum work"; and that Shotwell had increased this rate to 5 cents per pound in February 1946, and to 10 cents per pound in June 1946. (R. 2546–2549, 2572, 2575.)

At the time Cain gave this testimony, there was already in evidence (to take one example) a group of nine Shotwell invoices dated between December 6, 1944 and January 13, 1945, a recapitulation sheet prepared by Miss Feldman, and a check payable to cash—signed by Lubben, dated January 19, 1945, and cashed on that date—in the amount of $10,849. The nine Shotwell invoices billed Lubben for a total of 188,490 pounds of "gum work" (*i.e.*, gum drops and spice buttons—Govt. Ex. 27A, Ex. Vol. I, p. 21) and the recapitulation sheet (*id.*) showed an advance payment of $8,000. If, as Lubben testified, the rate of overage on "gum work" was 10 cents per pound from the very beginning, then the $8,000 advance had already paid for the overages on 80,000 pounds, and left Lubben still owing, as of January 19, 1945, $10,849 for the remaining 108,490 pounds billed by Shotwell. The check drawn to cash, and actually cashed on January 19, 1945 (R. 1443–1444, 1452–1453), was in the exact amount of $10,849, which ties in precisely with the 10-cent rate Lubben said was in effect in January 1945, and which Cain said (R.

2575) did not go into effect until June 1946 (Govt. Ex. 25A and 27A, Ex. Vol. I, pp. 20-21; R. 1427, 1430, 1434-1435, 1439-1441, 1443-1444, 1452-1453).

Similarly, on February 6, 1945, Lubben wrote a check to cash in the amount of $6,183, and it was cashed on that date. (Govt. Ex. 28, Ex. Vol. I, p. 23; R. 1439-1442.) This represented overages due to Shotwell on four Shotwell invoices billing Lubben for a total of 61,830 pounds of "gum work." (R. 1435, 1438-1442.) Again, here is solid proof that as early as February 1945, Shotwell was exacting cash black market premiums from Lubben, and at the rate of 10 cents per pound.[*] (Examples could be multiplied—see the prosecutor's summation to the jury, R. 2857-2858, 2863-2874—but we see no need for it.) We submit that these checks drawn to cash sweep away all the empty talk in petitioners' brief and in the defense summations to the jury (R. 2882-2896, 2898-2911, 2914-2918) to the effect that Lubben and his corroborating witnesses were lying, and that his books showing cash overages to Shotwell, were falsified. By the same token, Cain could not have been telling the truth when he testified (contrary to overwhelming evidence already in the record) that Shotwell had had no black market dealings with Lubben until after September 29, 1945, and that Shotwell had not increased the overage rate

[*] We note that in cross-examining Miss Feldmair, who testified in detail to these transactions, defense counsel carefully avoided discussing these checks payable to cash, except to bring out that the government had been unable to produce "cash authorization slips" from Lubben for these items (R. 1589-1591). This is a matter of no consequence, since Lubben undoubtedly signed the checks.

on "gum work" to 10 cents per pound until June 1946. (*Supra*, p. 80.) Cain was unable to explain, under cross-examination at the trial, how Lubben, early in 1945, happened to be drawing checks to cash in an amount equal to 10 cents for every pound billed to him on Shotwell invoices [80] when, according to Cain, the 10-cent overages were initiated by Shotwell only in June 1946. Defense counsel did not even attempt an explanation to the jury. It remains unexplained to this day, except on the theory, plainly adopted by the court and jury below, that the misstatements were not by Lubben but by Cain.[81]

III. Petitioners' allegations of fraud and impropriety on the part of the government are wholly unwarranted

Petitioners accuse the government of abusing the processes of law enforcement in several respects. The conclusion they draw from the supplemental hearing

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[80] Q. Well, Mr. Cain, how do you account for the fact that as early as 1944, and certainly as early as January, 1945, Mr. Lubben on the invoices he received from The Shotwell Manufacturing Company was marking a ten cent over-ceiling and was drawing checks to cash and was showing them on his records as drawn for the purpose of paying The Shotwell Manufacturing Company?

A. If you can tell me that, you are a better man that I am. (R. 2572.)

[81] The cases of *Mesarosh* v. *United States*, 352 U.S. 1 and *Communist Party* v. *Control Board*, 351 U.S. 115 (relied upon by petitioners—Br. 87-89) are plainly inapposite because in those cases it appeared after the trials in question that the testimony of government witnesses was substantially untrue. In the case at bar it is clear that, whatever Lubben's pre-trial sins may have been, his testimony was substantially true.

We have answered the contention (Br. 85) that Lubben's books had been "doctored" by one Tobias at pp. 78–79 and fn. 56, *supra*.

is not that fraud permeated the showing made by them, as both courts below have found, but, rather, that the remand order issued by this Court was improperly induced by the United States. Petitioners further allege that the government concealed from this Court certain prior inconsistent statements which tended to reflect adversely upon the credibility of the witnesses whose testimony it promised to produce. Finally, they suggest that the government, while prevailing upon this Court to hold the case in abeyance, harrassed witnesses until, either through fear or favor, they recanted the truth and told lies.

A. The trial court's findings support the government's contention that petitioners' showing was permeated by fraud, and do not bear out petitioners' contention that there was falsity in the government's representations to this Court

In its opinion remanding the case for supplemental proceedings, this Court stated "that either the testimony in the District Court was untrue or these affidavits themselves are the product of fraud" (355 U.S. 242–243). This issue has been resolved against petitioners, albeit their brief would suggest to the casual reader that somehow it was the government which was found lacking in good faith.

To answer petitioners' charges with particularity, it becomes necessary to summarize in some detail the series of representations which the government made or sponsored in urging this Court to remand the case for further proceedings.

The motion to remand, originally filed in October 1956 and amended a month later, advised the Court that an investigation launched by the national office

of the Internal Revenue Service in April 1955 had brought to light new evidence relevant to the question of the timeliness of the purported voluntary disclosure. The government expressed the view that this evidence, if it could be made available to the district court, would support findings that the petitioners did not attempt to make a voluntary disclosure until July 1948 (subsequent to Special Agent Krane's visit) and that Busby's figures were prepared during the space of a single day in the month of July, rather than over a period of several months beginning in January (as Busby had testified).

In support of these representations, the government relied principally upon two affidavits, one by James Yaden, an Internal Revenue inspector, and the other by Vincent P. Russo, an attorney assigned to handle a grand jury investigation initiated by the Justice Department in April 1956. According to Yaden's affidavit, dated December 1, 1955, witnesses interviewed by him in October and November 1955 stated that when Krane visited the Shotwell plant on June 21, 1948, Graflund telephoned Cain in New York to advise him that a special agent had requested certain documents relative to transactions with David Lubben; that Cain was shocked and disturbed to learn of this request; and that, upon terminating the long-distance conversation, Cain turned to his associates and condemned Graflund for having given Krane the documents. Yaden was further informed that in July 1948 a meeting was held in the Belden-Stratford Hotel for the express purpose of preparing the figures and documents from which there could be de-

veloped a voluntary disclosure of Shotwell's unreported receipts. Although Yaden's informants were not identified by name in the affidavit, it was in fact Graflund who related his telephone call to Cain and the Belden-Stratford meeting, and one Daniel Tobias who described Cain's reaction after receiving the call in New York.[82] Graflund's account of these events, as repeated at the supplemental hearing, was accepted by Judge Nordbye as accurate, and although Tobias was never called as a witness, his description of Cain's reaction to the phone call was substantiated at the hearing by the testimony of Huebner.[83]

Russo's affidavit, dated September 19, 1956, was based upon information obtained through interviews with several witnesses during the course of his grand jury investigation. Although not identified in the affidavit, Graflund and Huebner were among the witnesses interrogated by Russo. In addition to the two episodes already related in Yaden's affidavit, Russo disclosed that one Edward T. Urban, an officer of Close & Co., a candy manufacturer which also received black market payments from Lubben, informed him that in July 1948, at Huebner's invitation, Urban had lunched with Sullivan and Huebner at the Chicago

[82] Tobias told Yaden he was meeting with Cain, Sullivan, and Huebner in Cain's Waldorf Astoria Hotel suite when the call from Graflund came through. Heubner later testified that the Shotwell people met with Tobias in Cain's suite on June 22, the day *after* Graflund's call (App. 655-656.)

[83] However, while Tobias had mentioned Huebner as one of those present when Graflund's call was received, Huebner testified merely that Cain angrily told him about the call later the same day (App. 651).

Athletic Club, and that they discussed the purchase of Lubben's companies by Shotwell, Close & Co., and others who received over-ceiling payments from Lubben, with a view to acquiring and destroying the books and records of the Lubben companies and thus removing incriminating evidence."[64] Finally, Russo's affidavit reported certain information given him by Ralph Johnson, group supervisor in the Revenue Agent's office in Chicago. Sauber had testified at the original suppression hearing that, after his initial contact with Busby on March 15, 1948, he had immediately informed Johnson by telephone. Johnson, on the other hand, denied to Russo that he had received such a telephone call from Sauber in either March or April 1948, but stated that he did receive such a call some time before July 21, 1948, perhaps in May or June.[65]

In a supplement to its motion, filed in January 1957, the government advised the Court that upon remand Huebner's testimony, as summarized in an attached affidavit, would contradict the testimony given by Cain, Sullivan, and Busby on several crucial points. Among other things, Huebner's affidavit, executed on December 19, 1956, stated that the black market payments from Lubben extended over the period from November 1944 to December 1946, not

[64] Urban was unable to testify at the supplemental suppression hearing, as he was then hospitalized for treatment of an acute cerebral hemorrhage. (App. 1190.)

[65] Johnson's testimony was unavailable to the government at the supplemental hearing, as he was then under indictment for conspiracy to commit various offenses in connection with the case. (See S. 1–28.)

merely from September 1945 until the summer of 1946, as the defendants had testified. Huebner further stated that he, Cain, Busby, and others reconstructed the over-ceiling receipts from Lubben at a meeting at the Belden-Stratford Hotel in July 1948; that the purpose of the meeting, according to Cain, was to prepare figures for a disclosure to the Internal Revenue Service; that the over-ceiling disbursement figures prepared by Cain "were taken out of thin air"; that Huebner was given to understand that the agreed-upon date of the disclosure would be June 15, 1958; that, prior to this meeting, he knew of no work done by anyone relative to compiling data for a voluntary disclosure; and that at no time during the first six months of 1948 did Cain or Sullivan mention to Huebner that a voluntary disclosure had been made or was contemplated. In addition, Huebner, corroborating Ed Urban's disclosure to Russo, declared that he had arranged a meeting in July 1948 at the Chicago Athletic Club, at which Urban and Sullivan had discussed the possibility of buying Lubben out to obtain his records. The affidavit also related that in July and August 1948, at Cain's request, Huebner delivered to Cain $10,000 to "fix" the tax case; that Cain later told him the money had been turned over to someone to take care of a "tax fix" and that he had settled the tax case for a deficiency of $20,000; and that in October 1948 Busby told him there had been a meeting in the fraud division of the Internal Revenue office, that "hell had broken loose," and that some Internal Revenue people had a "heck of a time destroying papers that had been

made up for the purpose of billing Shotwell for taxes." Finally, Huebner declared that, after hearing Sauber testify at the original suppression hearing in 1952, he told Cain he thought the disclosure date was supposed to be June 15, 1948, whereupon Cain told him to "Ssshhh," since nobody else knew about that. On the basis of this affidavit, as well as the new evidence previously presented, the government urged a remand to the district court, since the record clearly appeared to contain perjured testimony and to be incomplete and inaccurate on the timeliness, extent, and good faith of the alleged voluntary disclosure.

On February 25, 1957, this Court granted the government's petition for certiorari, limited to the issues raised in the amended motion to remand, the supplement thereto and the petitioners' answer to the amended motion (352 U.S. 997).

On August 20, 1957, the government filed with the Court an affidavit of Graflund which had been executed on August 17, 1957. Much of Graflund's affidavit paralleled Huebner's. Graflund confirmed that the figures as to the amount of the cash receipts from Lubben were prepared at the Belden-Stratford meeting, called by Cain in July 1948 and attended by Cain, Busby, Huebner, and himself; that prior to this meeting he knew of no work done by anyone to assemble records or data for the purpose of preparing a voluntary disclosure to the government and had no information that any such disclosure to the government had been or was to be made; that, in the latter part of July 1948, Cain said he could settle the

Shotwell tax matter for about $20,000; and that, early in August, Cain reported that he had settled the case for a $20,000 deficiency. Graflund repeated his statement that on June 21, 1948, he was criticized over the telephone by Cain and Sullivan for having made certain records available to Special Agent Krane. He further stated that, a few days later, he visited Busby's home; that he then told Busby, for the first time, what he knew about the black market receipts; and that Busby gave no indication he had known of this matter previously. Finally, Graflund revealed that in 1949, acting on Cain's instructions not to have anything of an incriminating nature around the Shotwell office, he caused the destruction of certain cost records; and that, also in 1949, Sullivan told him, if questioned by the investigating revenue agent, to tell the agent he didn't know a thing.

In its brief, filed in August 1957 shortly after the filing of Graflund's affidavit, the government summarized (pp. 25–30) the newly discovered evidence relevant to the issues of timeliness and good faith. In addition to matters set forth in the affidavits of Huebner and Graflund, the brief declared (p. 29) that Huebner would testify that between $300,000 and $400,000 of Shotwell's black market receipts from Lubben were not paid out for the purchase of raw materials on the black market but, instead, were divided among Cain, Sullivan and himself. It also stated (p. 30) that Revenue Agent Lima would testify that, on July 30, 1948, he was assigned to audit the corporation's tax return; that he commenced the

audit the first week of August 1948; that he was instructed by Johnson, his group supervisor, to allow the over-ceiling purchases indicated on Busby's summary; and that he prepared a report showing a tax deficiency of about $20,000, which report he later destroyed on instructions of Johnson. The government expressed the view (p. 25) that the new evidence summarized in the brief would support the charge that perjured testimony with reference to the so-called disclosure had been given by petitioners Cain and Sullivan. This evidence, it was argued (p. 25), indicated the petitioners had made no move to disclose the corporation's unreported black market receipts prior to Special Agent Krane's visit on June 21, 1948; and showed conclusively that the alleged disclosure "was not only devoid of good faith and incomplete but was designed to mislead the Government and conceal the true facts."

If one considers the record and findings at the supplemental suppression hearing in the light of the above representations made to this Court, two salient facts emerge. *First*, the government's three principal witnesses—Graflund, Huebner, and Lima—gave precisely the testimony which, this Court was advised, the government anticipated. *Second*, of all the items of testimony foreshadowed in the briefs and affidavits the government submitted to this Court, only a single item was found by Judge Nordbye to be inaccurate. The exception was Graflund's statement that he first told Busby about the black market receipts in June 1948, rather than in January. The court found (Pet. 43) that "it is very probable that Graflund did men-

tion to Busby something about the black-market payments of Lubben to Shotwell when they were on the train together in January, 1948." The court further found, however, that Grathund discussed the matter with Busby on both occasions; that Grathund testified "in good-faith" that the first disclosure to Busby was in June 1948; and that the "apparent falsity" of Busby's statement that he first contacted Sauber in January 1948 "may well have caused Grathund to question the train episode as related by Busby." (App. 1759–1760; Pet. 42–43.)

With that one exception, every statement contained in Grathund's affidavit, and every statement contained in Huebner's affidavit, if mentioned at all in Judge Nordbye's [86] order, was found to be the truth. The court also believed Lima's testimony. Although the court deemed it improbable that Lima's report was to be the final adjudication of Shotwell's tax obligations, it found that Lima had taken preliminary steps to prepare a report [87] which had for its purpose the

[86] The court made no reference to the meeting at the Chicago Athletic Club between Huebner, Sullivan, and Ed O'Brian.

[87] During the period in question, a "revenue agent's report" consisted of two parts: (i) a transmittal letter, the confidential portion of the report which the taxpayer does not receive; and (ii) a preliminary "Statement of Total Tax Liability," which sets forth the computation of the tax liability, the taxes paid, and any deficiency or over-assessment (See App. 1358). The transmittal letter, in turn, consisted of a summary of the taxpayer's deficiencies or over-assessments for the years in question; several more or less formal questions; and, finally, an item called "other information", in which any unusual features of the taxpayer's situation were to be described. Questioned by government attorneys on December 19, 1956, Lima stated he had written out "a report, everything but the transmittal

settlement of Shotwell's tax deficiency in the amount of $20,000 (App. 1768; and see Pet. Br., 24–25). The court also found (App. 1768) that Lima's testimony about destruction of the report tied in with Huebner's (and Graflund's) testimony that Busby said there had been a meeting in the fraud division of the Internal Revenue office about the Shotwell taxes, that papers were being destroyed and that "all hell had broken loose"; and the court noted that the evidence in this regard "strongly tends to illustrate the connivance and lack of good faith in the so-called bona fide voluntary disclosure of Shotwell's tax deficiency."

Petitioners' charges (Br. 15 and fn. 10, 53–55, 76–78, 80–84) that Huebner and Graflund committed perjury, both in their testimony and in their affidavits to this Court, and that government representatives in effect suborned perjury, were presented in detail to the district court (see the petitioners' argument to

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letter" and "submitted the report to Mr. Johnson for his approval" (App. 1473). In testimony before the grand jury in February 1957, Lima elaborated on his December statement, explaining that the only part of the transmittal letter he did not fill in was the part called "other information," though as he later admitted that was the "guts" of the document (App. 1505). On direct examination at the supplemental hearing, he declared merely that he had "prepared a report" (App. 1357–1358), attempting to point out on cross-examination that the only part of the transmittal letter he did not complete was the section "other information" (App. 1474). Whether, in completing the "Statement of Total Tax Liability" and the formal parts of the transmittal letter, Lima could be said to have "prepared a report," prepared part of a report, or as the court put it, taken "some preliminary steps" to prepare a report (App. 1768), is a matter of terminology upon which nothing whatever turns.

the court." App. 1676 (1742). The court found not only that the charges were baseless, but that, on the contrary, fraud permeated the showing made by these petitioners at the original suppression hearing, as well as at the trial and the supplemental hearing. (App. 1770, Pet. 53-54.) In his opinion and order, Judge Nordbye stated that he did not believe any government official had attempted to have any witness testify falsely; that there was no foundation for the suggestion the government witnesses were trying to "frame" petitioners; that Huebner was trying to the best of his ability to tell the full story; and that Grathund was attempting to tell the truth as he remembered the events." (App. 1769–1770.)

Furthermore, notwithstanding the sweeping assertions to the contrary in petitioners' brief (pp. 5, 53, 62, 80), Judge Nordbye *did* find that Cain, Busby and Sauber had testified falsely in many respects as to the time and the manner of the alleged voluntary disclosure. He specifically found, for example (App. 1764–1765), that Busby and Cain did *not* contact Sauber in January 1948, as they had testified, nor on March 15, 1948, as Sauber had testified, but rather that "it was much later [than March 15, 1948] when

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[65] Statements of the witnesses at the supplemental hearing, memoranda of conversations with them, and grand jury transcripts were turned over to petitioners for purposes of cross-examination. After both sides had rested, the government, pursuant to an inquiry by the court, offered to turn all these documents over to Judge Nordbye to aid him in determining whether the testimony of the witnesses was inconsistent. It is noteworthy that counsel for petitioners objected and for that reason the statements were not received by the court. (App. 1638–1642, 1748–1749.)

Sauber was informed that Shotwell was the offending taxpayer."* He also found that "the circumstances disclosed by the evidence convincingly indicate that Busby is wrong when he states that he and the Shotwell employees were working on figures for a voluntary disclosure from January 1948 to June 1948" (App. 1760, Pet. 44). And, of course, the court found that petitioners were lying throughout when they denied that they had pocketed substantial amounts of black market cash from Lubben (App. 1758-1765, Pet. 41-48).

The court of appeals, upon its review of the record, observed that "[t]he district court on remand clearly considered relevant testimony of the defendants untrue and in effect absolved the affidavits of Huebner and Gratlund of the charge of fraud." (S. 296; Pet. 60.)

We add one final comment. The then Solicitor General would not have authorized the submission of affidavits if he had any doubt whatever of their pro-

*Judge Nordbye's finding (App. 1761) that Busby did visit Sauber some time before June 21, 1948 was based upon the testimony of Edmund B. Horgan, a retired Internal Revenue Service employee, who related an alleged occurrence about which the government had no prior information. Horgan, a friend of both Sullivan and Sauber, testified that he saw Sullivan in a hospital on June 4, 1948; that Sullivan asked if Sauber was "a tough Government man" or "a fair individual"; that Sullivan said his company had been to Internal Revenue and he had not heard anything about it; and that Sullivan wanted to know if Horgan could give him an answer. From his hospital room, Horgan allegedly talked by telephone to Sauber, informed Sauber of Sullivan's inquiry, and was told that Sauber had reported the case to the agents' office and in due time they would get around to it. (App. 1560-1601.)

bity. Subsequent events in nowise suggest that he was either misled or mistaken.

B. The government discharged its duty to disclose the nature of the newly discovered evidence which it proposed to offer in the District Court. It had no obligation, at that stage, to deal with questions of credibility which could only be resolved at an evidentiary hearing

Petitioners accuse the government of concealing from this Court the following facts: (i) that Graflund, at times prior to execution of his affidavit, had told government investigatory personnel, and also the grand jury, that he had first disclosed the black market transactions to Busby on the train in January 1948 (Pet. Br. 29–34, 81–82); (ii) that Huebner, prior to executing his affidavit on December 19, 1956, did not recall having attended a meeting with Sullivan and Ed Urban at the Chicago Athletic Club for the purpose of discussing a buy-out of Lubben's companies (Pet. Br. 38–39); and, (iii) that Lima, prior to December 1956, had testified as a government witness at the original suppression hearing and at the trial, and had been questioned by government investigators, without saying anything about the preparation of a revenue agent's report (Pet. Br. 34–35).

Citing *United States* v. *Zborowski*, 271 F. 2d 661, 668 (C.A. 2d), and other authorities dealing with the duty of a prosecutor to disclose exculpatory evidence, petitioners urge that there was impropriety in failing to bring this prior inconsistent testimony to the Court's attention. These cases have no relevancy whatever. Plainly, the then Solicitor General was not asking this Court to resolve the factual issues raised by its new evidence or to pass judgment upon the credi-

bility of the witnesses. Although the government was, indeed, convinced that the affidavits presented were truthful and that the record below was tainted by perjured testimony, it did not ask this Court to take any action which required it to endorse these views. On the contrary, the supplement to the motion to remand (pp. 5-6) took pains to point out that "[n]either this Court nor the Court of Appeals is properly equipped for the task of receiving and appraising testimony and evidence bearing on the controverted questions of fact," and that "[a]scertainment of where the whole truth lies with respect to the alleged disclosure is a function . . . for the trial court in the first instance." The purpose of the motion to remand was simply to bring to the Court's attention new evidence which—if believed by the trial court after being exposed to cross-examination and rebuttal in *that* forum—would support (or reinforce) findings that the purported voluntary disclosure had been untimely and/or devoid of good faith.

We note, moreover, that even if this Court *had* been disposed to weigh the credibility of the government's proposed testimony—a fanciful premise—it would not have been greatly assisted by a bare concession that this testimony would in certain respects deviate from previous testimony of the witnesses. A determination of a witness's credibility requires the fullest exploration of details and an appreciation of every nuance in his story. Huebner, for example, was reminded of the meeting with Ed Urban at the Chicago Athletic Club by talking to Urban himself, who recalled the incident

in vivid detail (App. 970).[70] Gratlund, in explaining why he repudiated his original testimony concerning his conversation with Busby on the train in January 1948, told the trial court at the supplemental hearing that, in fact, he had been drinking during that conversation and was unsure what had been said; that he accepted at face value, and thereafter repeated, what Busby told him had taken place on the train; and that it was only when he recalled his visit to Busby's house in June 1948 that he was moved to go back to the grand jury (on February 20, 1957) and correct his prior testimony (App. 1202–1204). At the supplemental hearing Lima frankly acknowledged that he had previously lied about the revenue agent's report; that he realized he had acted improperly in following Johnson's instructions to prepare, and subsequently destroy, the report; and that he was afraid if the truth were discovered he would get into trouble and lose his job. (App. 1368, 1503, 1523–1525, 1529–1534.) The plausibility of these explanations would have had to be determined by this Court in the light of the entire record, including that portion of the affidavit testimony which was *not* inconsistent with prior statements, and even then it could not have been satisfactorily decided in the absence of an opportunity to observe the demeanor of the witnesses.

The propriety of the conduct of government counsel the first time the case was here becomes still clearer

[70] Urban recalled, for example, that Sullivan had pointed out Chicago's Mayor Kennelly at a nearby table. This reminiscence is not in the record, but is preserved in the memorandum of Urban's interview by government investigators in September, 1956.

when the alternative is considered. Counsel believed that the affiants would testify in accordance with the affidavits and that their statements were honest. Counsel also believed that the affiants' stories corresponded substantially with the true facts and would be credited by the judge at the proposed hearing. In addition, counsel knew or had information from which they could know that the affiants might be impeached either because of their prior contradictory statements or their earlier failure to include in their account of the events the facts to which they now proposed to testify. The very most that counsel could have done under these circumstances would have been to inform the Court that the witnesses probably would be attacked upon the latter grounds but that they, as government counsel, fully believed the truth of the affidavits and were confident that the district court would agree. We agree that the government has an obligation to volunteer all relevant information and must err on the side of excessive candor, but the obligation is to help the Court administer justice. Counsel should have asked—and perhaps did ask—themselves whether adding the foregoing statements would be of any possible assistance to the Court. Plainly, it had no logical relevance. The Court was not being asked to pass, and could not pass, upon any question of credibility. Nor would it color the record to such an extent that one might imagine its influencing the decision psychologically. In short, while counsel with unusual foresight and cynicism might think it wise to make the disclosure in order to protect themselves against unjustified criticism, the test

of helpfulness to the Court certainly did not require them to bring forward the possible weaknesses in the newly discovered evidence. Indeed, disclosure would have opened up more questions than it solved. If counsel mentioned these "weaknesses" in the newly discovered evidence, would they not be guilty of half-truths if they failed to explain everything else that might be said against it? And they would then be warranted in describing all the corroborative information. Manifestly, all this would be quite collateral because the veracity of the projected testimony was not then in issue. Furthermore, even if it be supposed that counsel erred in failing to refer to the impeaching material, the worst that can be said is that they committed an error of judgment while acting in good faith. Such a mistake, even if it occurred, would not vitiate the careful findings of the district court made after a full review of all the relevant evidence.

Once the suppression hearing had commenced, the government, contrary to petitioners' allegation, was entirely cooperative in making available to petitioners all of the prior statements and grand jury testimony of its witnesses (App. 554–556, 891, 994–986, 1191, 987–989, 1369–1373). Indeed, in Lima's case, the government turned its statements and memoranda over to opposing counsel a week before the witness took the stand (App. 987–989). We might note,

[7] It is true, as petitioners point out (Br. 78), that the government did not volunteer the statements *prior* to the hearing (App. 297). Under 18 U.S.C., Section 3500, however, it is contemplated that production of such statements will take place only after the witness has testified on direct examination.

moreover, that after both sides had rested, the government, in response to an inquiry by the court, offered to furnish all prior statements of its witnesses to Judge Nordbye for whatever illumination they might throw upon the case. Counsel for petitioners, however, having used the statements for purposes of cross-examination, objected to their further use, and for that reason the court declined to receive them. (App. 1638–1642, 1748–1749.) In his order, Judge Nordbye commented that "[t]he forthright attitude of government counsel to submit all prior statements and Grand Jury testimony of Huebner and Graflund to defendants' counsel indicates a commendable frankness in affording the Court all of the background which may bear upon their veracity" (App. 1770, Pet. 53).

The government is keenly aware of the exacting obligation of candor it owes this Court. When it sponsors affidavits—even, as here, for the limited purpose of showing that the record below needs to be amplified—the Court has a right to assume that these affidavits have not been improperly obtained; that, so far as the government knows, they honestly reflect the affiants' best current recollection of the events described; and that the government is not withholding other new evidence which discredits or substantially outweighs the evidence it exhibits to the Court. Beyond that, the Court is entitled to assume that the government itself is convinced that its witnesses are telling the truth. We do not believe, however, that it was incumbent upon the government, in seeking a remand, to anticipate for the Court every circum-

stance which might be relevant in assessing the credibility of the testimony proposed to be adduced. The government made no pretense that the testimony which would be given by its witnesses, and which was outlined in their affidavits, would correspond in all respects to their original, unrefreshed recollections of the events in question, all of which had taken place at least eight, and in some instances as many as twelve years earlier.

In the case of Lima, it was apparent on the face of the record before this Court that his self-incriminating admission of having prepared and later destroyed a revenue agent's report, showing only $20,000 of taxes due from Shotwell, was a sharp departure from previous testimony, for, as noted earlier, Lima had appeared as a government witness both at the original suppression hearing (R. 319 *et seq.*) and at the jury trial R. 2804, *et seq.*) without so much as mentioning such a report.

Both Huebner and Grathund, as the Court knew, were officers of Shotwell. Huebner, though not a petitioner here, was a defendant in this case. Grathund, though not a defendant, was seriously implicated. Their belated offers to testify fully to the facts outlined in the relevant affidavits represented, on the face of it, a change of position. The reasons for this change, the way in which it occurred and the manner in which they recalled or reconstructed events and transactions long past were certainly matters which the petitioners were entitled to explore. Plainly, however, the inquiry was not initially one for this Court.

C. The charges of "undue pressure" are unsubstantiated and baseless

Petitioners would have the Court believe that the government obtained the testimony it wanted from Graflund and Huebner by a "brain washing" process in the course of which the witnesses were relentlessly questioned until they capitulated and told the desired story. The charge has no foundation.

The Court should bear in mind that in April 1956 a grand jury had been impanelled to inquire into all facets of the Shotwell income tax situation for the years 1944, 1945 and 1946, including the administrative handling of the original corporate tax case by the Internal Revenue Service, with a view to ascertaining whether and by whom any laws of the United States had been violated. With relatively brief interruptions, the grand jury was in continuous session from July through October 1956 and again during January and February 1957, returning, on February 27, an indictment against Sullivan, Cain, Busby, Sauber, and Johnson for conspiracy to defraud the United States and to evade income taxes.[72] More than 64 witnesses, including many Shotwell employees or former employees, appeared before the grand jury, and their testimony filled 77 volumes. As Attorney Russo and his colleagues progressed with their investigation,—

[72] The statement in petitioners brief that the 1957 indictment "did not charge that anyone had committed perjury with respect to the voluntary disclosure" (Appendix C, Br. xiv; Br. 47) is misleading. The indictment contains a number of counts alleging perjury on the part of Cain and Sullivan as to their dealings with Lubben in 1945 and 1946. These matters go to the very heart of the good faith of the alleged voluntary disclosure. (S. 17–25).

interviewing additional witnesses and combing a maze of documentary records, including bank records, pertaining to Shotwell's transactions—they inevitably found it necessary to recall Gratlund, Huebner, and other witnesses for further questioning in the light of new information which was unfolding. There is nothing in this record to suggest that the sessions at which Department of Justice attorneys and Internal Revenue personnel met with Gratlund and Huebner were characterized, at any point, by any intimation of coercion.[23] And we know of nothing outside the record to support the suggestion.

IV. The trial court properly denied petitioners' motions, filed more than four years after the verdicts, challenging the selection of the grand and petit juries

In July 1957, petitioners, alleging improprieties in the selection of the grand jury, moved for leave to withdraw their pleas of not guilty for the purpose of filing an amendment to their motion to dismiss the indictment. The motion was denied by District Judge Perry. (App. 3, 15–17; Pet. Br. 55–56.)

In March 1958, more than four years after the verdicts, petitioners, alleging newly discovered evidence, filed motions to amend their original motions to dismiss the indictment, in arrest of judgment, for judgment of acquittal notwithstanding the verdict, and for new trial. The moving papers (App. 111–115) alleged, in substance, that the grand and petit juries

[23] In the course of lengthy cross-examination, both men repeatedly denied (see, *e.g.*, App. 827–828, 915, 937–938, 1269–1270; cf. 1276) that they had been subjected to any form of pressure.

were illegally constituted and were selected through discriminatory and illegal practices by the Clerk of the District Court and the Jury Commissioner (including unlawful delegation of the powers of the Jury Commissioner). After a full hearing (App. 342–373), the motions were denied (App. 429–439).

In an extensive opinion (App. 429-439), Judge Noidbye noted that the motions represented petitioners' first challenge to the grand and petit jury arrays and held that any right to challenge the jury panels had been waived; that petitioners had failed to make any showing which would justify the court in granting relief from the waiver; that the juries in fact were not illegally constituted; and that there was no illegal delegation of duties of the Jury Commissioner.

Petitioners allege (Br. 90–107) that both the grand and petit juries were illegally selected because (1) the Jury Commissioner delegated his duties to one of his private employees; (2) volunteers were permitted to serve on the juries; and (3) the Clerk of the District Court used no method calculated to secure a cross-section of the population, but merely selected names from lists of private organizations and upon nominations of former jurors.

A. Petitioners' right to raise the point was waived by years of inaction

Petitioners plainly waived any right they may have had to question the method of choosing grand jurors. Rule 12(b)(2) of the Federal Rules of Criminal Procedure provides:

> Defenses and objections based on defects in the institution of the prosecution or in the indictment or information other than that it fails to

> show jurisdiction in the court or to charge an offense may be raised only by motion before trial. * * * Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. * * *

In *Scales* v. *United States*, 367 U.S. 203, 259, this Court held that such a waiver had taken place where the defendant, alleging that the grand jury was illegally impaneled, filed a pre-trial motion to dismiss the indictment subsequent to the deadline allowed by the court for the filing of motions. To similar effect are *United States* v. *Clancy*, 276 F. 2d 617, 631-632 (C.A. 7th), reversed on other grounds, 365 U.S. 312; *Miranda* v. *United States*, 255 F. 2d 9, 16 (C.A. 1st); *United States* v. *Silverman*, 129 F. Supp. 496, 513 (Conn.).

Similarly, a contention that a petit jury was not lawfully constituted, or that the jury panel was improperly selected, comes too late when made after the verdict. *Frazier* v. *United States*, 335 U.S. 497, 503; *United States* v. *Klock*, 210 F. 2d 217, 220 (C.A. 2d); *Haurattу* v. *United States*, 218 F. 2d 358, 359 (C.A. 5th), certiorari denied, 349 U.S. 928; *Higgins* v. *United States*, 160 F. 2d 222, 223 (C.A.D.C.), certiorari denied, 331 U.S. 822; *Zito* v. *United States*, 64 F. 2d 772, 773 (C.A. 7th); *United States* v. *Peterson*, 24 F. Supp. 470 (E.D. Pa.). Cf. *Batsell* v. *United States*, 217 F. 2d 257, 260 (C.A. 8th); *Gomez* v. *United States*, 245 F. 2d 344, 346 (C.A. 5th), certiorari denied, 355 U.S. 863. Petitioners' reliance upon *Ballard* v. *United States*, 329 U.S. 187, is misplaced,

for in that case the challenge to the jury panel was timely made and preserved, as was pointed out in *Wright* v. *United States*, 165 F. 2d 405, 407 (C.A. 8th).

As Judge Nordbye aptly observed, petitioners are attempting to challenge the jury panels in a collateral proceeding under the guise of newly discovered evidence. (App. 432.) It has been held, however, that newly discovered evidence must be competent and relevant to the issues tried, and of such weight and nature that, if added to the evidence already in the case, it would probably change the result of the trial, and that a motion for new trial alleging illegal selection of the jury fails that test. *Tracy* v. *Terminal R. Ass'n. of St. Louis*, 170 F. 2d 635, 640–641 (C.A. 8th). Moreover, petitioners face the additional obstacle that whenever a new trial is sought on the basis of newly discovered evidence it must be shown that the evidence could not have been uncovered with due diligence at an earlier date.[7] There is no question that the Jury Commissioner, the Clerk of the Court, and those who assisted him were available for examination at all times. And, of course, the fact that some of the members of the panel were volunteers could readily have been ascertained at the time the jury was constituted.

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[7] *United States* v. *Allied Stevedoring Corp.*, 258 F. 2d 104, 105 (C.A. 2d), certiorari denied, 358 U.S. 841; *United States* v. *Costello*, 255 F. 2d 876, 880–881 (C.A. 2d), certiorari denied, 357 U.S. 937; *Mills* v. *United States*, 281 F. 2d 736, 738–739 (C.A. 4th); *Vaughn* v. *United States*, 93 F. 2d 550, 552 (C.A. 5th).

Although there may be circumstances in which it would be appropriate for the court to grant relief from the effects of a waiver such as this, petitioners have made no showing which would warrant such relief here. They do not contend that any irregularities in the selection process resulted in prejudice, nor do they show that the membership of the grand jury was unrepresentative of the community at large. And while petitioners claim that they were not aware of the alleged improprieties until shortly before they filed their motion, the court found that the method of selecting jurors in the Northern District of Illinois by Clerk and Jury Commissioner had been followed for years; that inquiry as to the system employed could have been made at any time; and that publicity as to the acceptance of volunteers had even appeared in the press (App. 432.)

Although it seems inescapably plain that petitioners have waived their right to raise the point, we shall nevertheless discuss the merits of their contentions concerning the selection of the jurors.

B. There was no illegal delegation of the duties of the Jury Commissioner

Petitioners assert (Br. 91–97) that the Jury Commissioner, the late Harry D. Crooks, abandoned and delegated the exercise of judgment as to the selection and rejection of prospective jurors to his employee, Richard Jongsma. They allude, in part, to the testimony of Crooks before Judge Barnes on June 28, 1957 (S. 226–245), in which he answered questions regard-

ing the manner of selecting names for the April 1956 Term Grand Jury, which in February 1957 indicted the individual petitioners and others in *United States v. Sullivan, et al.*, No. 57, CR 149 (Pet. Br. 47 and App. C, xiv).[13] Crooks acknowledged that he had Jongsma do a large part of the work of his office. But his testimony does not show that he had abandoned and delegated to Jongsma the selection of names from which were drawn the grand and petit jurors in the present case.

Jongsma, called as a witness for petitioners on April 21, 1958, gave the following testimony: For 23 years he had been employed by Crooks Terminal Warehouse and worked for its president, Harry D. Crooks. He did all the clerical work connected with Crooks' duty as Jury Commissioner. In connection with the selection of the names of certain members of the March 1952 Grand Jury, which returned the indictment in this case, and also of the petit jury which heard the case, Jongsma sent letters to various labor organizations, clubs, churches and church organizations in the Chicago area, the names of which were taken from the classified telephone directory. He also

[13] Crooks, who became Jury Commissioner on August 27, 1934, died in October 1957 (App. 317-318; S. 240.) In the course of proceedings held in this case on March 17, 1957 (App. 152), the record of the hearing before Judge Barnes on a motion attacking the constitution of the April 1956 Term Grand Jury in *United States v. Sullivan, et al.*, No. 57 CR 149, printed as an Appendix in Support of Petition for Writ of Mandamus filed in the Court of Appeals in *Sullivan, et al. v. United States District Court* (No. 12, 140), was by stipulation made a part of the record in the present case (App. 157, 312) and is referred to herein and in petitioners' brief as "S.".

selected names at random from telephone directories for inclusion in the list of persons to whom questionnaires would be sent. In addition, he sent questionnaires, along with a form letter signed by Crooks and stating qualifications for jury service, to all persons on the list of names compiled from organizations and telephone directories. When the questionnaires were returned, Jongsma checked them to see whether each individual met the statutory qualifications or came within the statutory exemptions shown on the reverse of the form letter. All of this was done under the supervision and direction of Crooks. When in doubt, Jongsma discussed certain questionnaires with Crooks, and it was the latter who made the decision as to which organizations to write to. Crooks told Jongsma to use the classified directory and send letters to all or virtually all the organizations listed under the headings of "clubs" and "churches," and Jongsma did so. (App. 315-362.)

The substance of Jongsma's testimony is that he acted in a ministerial or clerical capacity in carrying out instructions of his employer. Crooks did not delegate, nor Jongsma exercise, the ultimate responsibility for deciding from what sources the names of prospective jurors would be solicited. And there is no suggestion that Jongsma performed any discretionary function, such as selecting from the list of eligible prospective jurors, as disclosed by the questionnaires, the names which would be deposited in the jury wheel. All Jongsma did was read the questionnaires and eliminate those individuals whose responses showed that they did not meet the statutory requirements or that

they came within the statutory exemptions. This was a job which could just as well have been performed by an IBM machine.

Certainly, a public officer may delegate to an agent the execution of mechanical, clerical, or ministerial acts not involving judgment or discretion. Cf. *In re Giles*, 21 F. 2d 536, 537 (N.D. Ga); 67 C.J.S. Officers, Sections 104, 112, 114, particularly, Section 114. Official duty is ministerial when it is absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts, and the duty does not become discretionary in nature merely because those fixed and designated facts need to be ascertained. 43 Am. Jur., Public Officers, Section 258; *State ex rel. School Dist.* v. *Ellis*, 163 Neb. 86, 93, 77 N.W. 2d 809, 813. Since Jongsma acted in a ministerial capacity under the supervision and direction of Crooks, the work he performed did not involve any illegal delegation of the Jury Commissioner's duty of selecting names of prospective jurors.

The cases cited by petitioners are readily distinguishable. In *Glasser* v. *United States*, 315 U.S. 60, 85, this Court merely observed that the "duty of selection" by the Clerk of Court and a Jury Commissioner may not be delegated. In *United States* v. *Murphy*, 224 Fed. 554 (N.D.N.Y.), five-sixths of the names in the jury box came from a list which had been prepared for the Jury Commissioner by an Assistant United States Attorney—not entirely a disinterested party—who had drawn his list selectively from a larger list of all eligible jurors in the county. *In re Petition for Special Grand Jury*, 50 F. 2d 973 (M.D.

Pa.), the court rejected a citizens' petition to have a grand jury selected by certain private persons and organizations. In *Dunn* v. *United States*, 238 Fed. 508 (C.A. 5th), an unauthorized person performed all of the functions, discretionary as well as ministerial, of the clerk of court in selecting names for possible jury service.

C. The grand and petit juries were not illegally constituted because of the service of volunteers

The petitioners further challenge the grand and petit juries on the ground that "volunteers" were permitted to serve on both panels. They argue that volunteers were not competent as jurors under Illinois law and, therefore, under 28 U.S.C., Section 1861 (1952 ed.), then applicable, were not qualified for federal jury service. They also urge that, as a matter of policy, volunteers should be disqualified from serving on any federal jury.

According to petitioners (Br. App. D), 9, and possibly 10, of the 23 members of the Grand Jury,* were volunteers. That fact alone could not invalidate the indictment, even if volunteers should be deemed ineligible, for Rule 6(b) of the Rules of Criminal Procedure provides that an indictment shall not be dis-

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* The record discloses that five members of the Grand Jury (Karlson, Kruse, Delaney, Petersen, and Lundblom) definitely volunteered their services, three of them in response to a letter inviting volunteers for jury duty, written by Crooks and published in the *Chicago Tribune* (App. 321-326.) Three of the members (Underhill, Mohn, and Jachera) were *probably* volunteers (App. 417.) The record does not disclose that Schlichert, the ninth member identified by petitioners, was in fact a volunteer. Another juror, McDermott, was a "possible" volunteer (App. 147.)

missed on the ground that one or more members of the Grand Jury were not legally qualified if it appears from the record that 12 or more jurors, after deducting the number not qualified, concurred in finding the indictment. There is no evidence in the present record that, after deducting the volunteers, less than 12 jurors concurred in finding the indictment. And petitioners, upon whom, we submit, the burden rested, never asked the District Court, either in connection with the present motion or at any prior time, to ascertain the number of qualified jurors who supported the indictment.

The record shows that the only alleged volunteer on the petit jury (Ethel A. Gassen) called the Jury Commissioner by telephone in response to a letter he sent to various clubs, churches, and labor organizations (App. 329–330.) It is questionable whether a person who submits her name in response to a solicitation of the Jury Commissioner should be deemed a "volunteer." However, even if Mrs. Gassen were so considered, and even if it were assumed that volunteers were disqualified for jury service under Illinois law, her service would still not infect either the array or the petit jury. Thus, in *United States* v. *Smith*, 253 F. 2d 95, 97 (C.A. 7th), certiorari denied, 357 U.S. 919, a challenge to the petit jury array on the ground, among others, that it included volunteers was overruled by the trial court. In affirming this action, the court of appeals said:

> The evidence did show that names of volunteers were included. However, there was no

evidence that there were any volunteers on the panel summoned in this case. Even if there were it would not constitute a good ground for a challenge to the array because the entire panel would not be affected. Any legally disqualified juror on the panel could have been eliminated on a challenge for cause. There is no showing that any such challenge was made and overruled by the trial court.

We note, moreover, that while petitioners assert (Br. 97) that volunteers were incompetent under Illinois law, the statute they cite (Br. App. A, p. iii) appears to disqualify volunteers only in a case where a sheriff has been directed by the court to summon additional persons upon the exhaustion of the regular jury panel. We have found no decision by an Illinois court on the question whether volunteers are qualified for jury duty generally.

If volunteers are *not* incompetent to serve on juries under Illinois law, there is no authority for the proposition that they are incompetent under federal law. In *Dow v. Garnegie-Illinois Steel Corp.*, 224 F. 2d 414, 427 (C.A. 3d), certiorari denied, 350 U.S. 971, the court, while expressing disapproval of the volunteer method, nevertheless affirmed a judgment based upon the verdict of a jury consisting partly of volunteers on the ground that there was no evidence that persons had volunteered for improper purposes or that the acceptance of volunteers operated to exclude any cognizable group. Likewise, as Judge Nordbye emphasized in his opinion, there is no such evidence in this case.

D. The methods utilized by the Clerk of the District Court in selecting names of prospective jurors were permissible

Petitioners complain (Br. 100–103) that, according to an estimate of the Clerk of the District Court,[11] 70 to 75% of the names selected by the Clerk were drawn, directly or indirectly, from membership lists of private organizations. They allege (Br. 102) that this Court, in *Glasser* v. *United States*, 315 U.S. 60, "emphatically told all jury selection officials, and specifically those of the Northern District of Illinois, not to use such lists, and particularly not to use that of the Illinois League of Women Voters."

Petitioners misread the *Glasser* case. There, it was contended that an impartial trial had been denied because of the alleged exclusion from the petit jury panel of all women who were not members of the Illinois League of Women Voters. In its opinion (pp. 83–87), this Court did not broadly condemn the practice of utilizing membership lists of private organizations. Rather it condemned the exclusive reliance upon the membership of a single private association. Cf. *United States* v. *Dennis*, 183 F. 2d 201, 218 (C.A. 2d), affirmed, 341 U.S. 494, rehearing denied, 342 U.S. 842, 355 U.S. 936; *United States* v. *Flynn*, 216 F. 2d 354, 385 (C.A. 2d), certiorari denied, 348 U.S. 909; *Dow* v. *Carnegie-Illinois Steel Corp.*, *supra*, p. 427.

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[11] The Clerk testified that the figure "might" be as high as 70 to 75%, but that he "can't tell for sure." (S. 182.)

Petitioners also complain that the Clerk of the District Court utilized names submitted by former jurors. The use of such a sponsor system, however, is not unlawful. *Scales* v. *United States*, 260 F. 2d 24, 44–45 (C.A. 4th), affirmed, 367 U.S. 203, 259; *Dow* v. *Carnegie-Illinois Steel Corp.*, *supra*, at pp. 427–428 (in which names were solicited from former jurors); *United States* v. *Dennis*, *supra*, pp. 217–218; *United States* v. *Flynn*, *supra*, p. 385; *Walker* v. *United States*, 93 F. 2d 383, 390–391 (C.A. 8th), certiorari denied, 303 U.S. 644; *United States* v. *Brandt*, 139 F. Supp. 349, 360 (N.D. Ohio), reversed on other grounds, 256 F. 2d 79 (C.A. 6).

In this case the evidence shows that the names selected by the jury officials came from private organizations, telephone directories, nominations of postmasters in areas outside of Cook County, nominations of former jurors and other individuals, and also included volunteers. (S. 123–209; App. 315–357.) Similar methods of obtaining names of prospective jurors were sustained in *Dow* v. *Carnegie-Illinois Steel Corp.*, *supra*. Moreover, as the trial court found in its detailed opinion (App. 429–439), the methods used in the selection of jurors in this case did not result in the exclusion of any class or in the composition of juries which were not truly representative of a cross-section of the community.

V. There was no error in the instructions to the jury

The contention (Br. 108–110) that the court improperly permitted the jury to consider the disclosure

documents against Sullivan is frivolous. These exhibits (Govt. Exs. 185, 186, 189A–189E, Ex. Vol. I, pp. 116–117, 122–126) were, as we have said (*supra*, p. 53), admitted only against Cain and the corporation, and the jury was instructed that any "statement or act of one of the defendants not in the presence of another defendant is not binding upon the absent defendants" (R. 2970). If anything, this instruction was more favorable than petitioners deserved.[78] It would surely have been impracticable for Judge Nordbye, as he discussed the evidence in his final instructions, to have reminded the jury with respect to each bit of evidence mentioned that it had been admitted only against certain named defendants and should not be considered against the others. Moreover, Sullivan has no standing to object to the instruction now complained of because (1) his attorney, in summing up to

[78] Judge Nordbye—apparently out of an abundance of caution—frequently admonished the jury to that effect. But it is settled that the rule which imputes the acts and declarations of a conspirator in furtherance of the common aim to all his fellow conspirators, is applicable even though no conspiracy has been charged. *United States* v. *Bernard*, 287 F. 2d 715, 720–721 (C.A. 7th), certiorari denied, 366 U.S. 961; *Davis* v. *United States*, 12 F. 2d 253, 257 (C.A. 5th); *Reistroffer* v. *United States*, 258 F. 2d 379, 386–388 (C.A. 8th); *United States* v. *Pugliese*, 153 F. 2d 497, 500 (C.A. 2d); *Neal* v. *United States*, 185 F. 2d 441, 442 (C.A.D.C.), certiorari denied, 340 U.S. 937; *Lee Dip* v. *United States*, 92 F. 2d 802, 803 (C.A. 9th), certiorari denied, 303 U.S. 638; cf. *American Fur Co.* v. *United States*, 2 Pet. 358, 365–366.

the jury, argued that as soon as Sullivan learned from Busby that Lubben's books showed the cash payments to Shotwell, Sullivan "had his people go right straight to the Government then and there" and make a voluntary disclosure (R. 2195; cf. R. 1980); and (2) Sullivan joined with all the other defendants in *requesting* an instruction under which the jury might consider on the issue of intent "the actions of the defendants pursuant to the voluntary disclosure policy" (R. 3210).[*]

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[*] With respect to the point (Br. 108) that Lubben "voluntarily recant[ed] his testimony [regarding a conversation between Lubben and Sullivan] because of overnight 'divine guidance'", it should be noted that the only change in Lubben's testimony pertained to the date of the conversation (R. 920-922). Although petitioners did not object to Lubben's use of the phrase "divine guidance" at the trial, they have rarely missed an opportunity—during nine years of appellate proceedings—to ridicule him for it. The testimony, which was given on direct examination, appears in the following context (R. 922):

"Q. Well, have you arrived at this more refreshed recollection just through your own mental processes or have you had something that you have seen that helps to refresh your recollection?

"A. Sir, I have seen nothing but each day and each night I ask for divine guidance to remember as correctly as I can possibly can [*sic.*].

"This happened back in 1946 and I am trying very hard and I don't want to say anything that is not true. I am doing the very best I possibly can."

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be affirmed.

Respectfully submitted.

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AUGUST, 1962

APPENDIX

Extracts From Published Pronouncements of Treasury Officials Relating to the Voluntary Disclosure Policy

In a press release issued by the Treasury Department, Bureau of Internal Revenue, on October 5, 1945, Commissioner of Internal Revenue Nunan (R. 3131–3132):

> * * * stressed the Bureau policy of refraining from instituting criminal proceedings against taxpayers who come forward voluntarily and pay up delinquencies plus interest and civil penalties before the Bureau has begun investigating their cases.

On May 14, 1947, the Chief Counsel of the Bureau of Internal Revenue, J. P. Wenchel, said in the course of an address delivered before the Tax Executives Institute in New York, entitled "Tax Frauds and Voluntary Disclosures" (R. 3132, 3135–3137):

> There is one important exception to [the Treasury's policy of recommending criminal prosecution in tax evasion cases]. The Department has broad discretionary power long recognized by the Congress to determine the policy and procedure for the effective enforcement of the internal-revenue laws. The Department, acting under that power, does not recommend prosecution of the evader who repents in time. There is nothing new in the position. For years the position of the Department has been that where the taxpayer makes a voluntary disclosure of intentional evasion before investigation has been initiated, criminal prosecution will not be recommended.

The Department has always encouraged voluntary disclosures.

And what is a voluntary disclosure? A voluntary disclosure occurs when a taxpayer of his own free will and accord, and before any investigation is initiated, discloses fraud upon the Government.

* * * * *

In excusing the man from criminal prosecution, we are merely taking a sensible step to produce the revenue called for by law with the minimum cost of investigation. The man who makes a voluntary disclosure saves us a lot of money in investigating. In return, we can spare him a term in jail. This is good business from his standpoint and it is good business from the Government's standpoint.

In a press release issued on May 25, 1947, Secretary of the Treasury Snyder stated (R. 3140–3141):

One of the important elements in settling cases, with civil penalties and without prosecution, has been the Treasury's policy of not prosecuting persons who make a voluntary disclosure of their fraud before the Treasury begins an investigation of their cases. This means that, in order to assure himself against criminal prosecution, a repentant taxpayer must disclose his fraud to an official of the Bureau of Internal Revenue before the case has been assigned for examination and before an investigating officer of the Bureau has requested advice from appropriate officers of the Bureau regarding the case. Prior to such action within the Bureau, a taxpayer may make a voluntary disclosure and escape criminal prosecution even though his name may appear in an inactive file of suspects. This presumes, of course, that the repentant taxpayer cooperates with agents of the Bureau in determining the true tax liability.

The voluntary disclosure policy was revoked by a press release issued by the Treasury Department on January 10, 1952, in which Secretary of the Treasury Snyder stated (R. 3142):

> While it has been the long-established policy of the Treasury Department to refrain from recommending criminal prosecution where taxpayers make voluntary disclosure of intentional tax evasion prior to the initiation of an investigation by the Bureau of Internal Revenue it has been concluded that such policy will no longer be followed.

U.S. GOVERNMENT PRINTING OFFICE 1962

SUPREME COURT, U. S.

Office Supreme Court, U.S.
FILED
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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

No. 16

THE SHOTWELL MANUFACTURING COMPANY (RENAMED HOMAN MFG. CO., INC.), A CORPORATION, BYRON A. CAIN AND HAROLD E. SULLIVAN,
Petitioners,

vs.

UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF FOR PETITIONERS.

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The Government would avoid the hard questions on which certiorari was granted by arguing that petitioners were probably guilty of some variety of tax evasion, corporate or personal, from which it apparently is hoped the legal improprieties necessary to reaching a conclusion of guilt on the indictment at bar may be overlooked. No opportunity to blacken petitioners is overlooked. Indeed, the opening sentence of the Government "Statement" unfairly charges us with attacking the unquestioned integrity of the trial court. This unfounded charge is not men

tioned, much less supported, in the balance of the brief; its insertion in the opening is merely an attempt to prejudice petitioners (or their lawyers) at the outset.[1]

Petitioners deny guilt; however, a conclusion of guilt or innocence is not determinative of the issues and is one to be arrived at only by a jury fairly empaneled and which has not been misled by admittedly exaggerated confessional material coaxed from petitioners by promises of immunity from criminal prosecution, nor misled by false and "doctored" affirmative prosecution evidence.

QUESTIONS PRESENTED.

The Government refuses to face three of the questions presented by the Petition for Certiorari and argued in petitioners' main brief. Thus,

(a) The constitutional and common law questions as to admissibility in a federal criminal trial of evidence extracted from potential defendants by promising them immunity are converted, in the Government's brief, to the different question as to whether petitioners complied with the prosecutors' construction of the Treasury's "voluntary disclosure" program.

(b) The question as to whether federal criminal justice was abused by withholding exculpatory evidence from this Court, and from petitioners, while agents of the prosecution pressured the witnesses, is converted, in the Government's brief, into a question simply as to whether there was outright falsity (there was), in such testimony as actually was divulged to this Court.

[1] Petitioners were and are in strong disagreement with the trial court on his construction of the voluntary disclosure policy and on many of his factual determinations. But respectful and, we believe warranted, disagreement is not an attack on integrity. Our differences with the honorable trial court were frankly discussed with him. See App. 1777 ff.

(c) The question as to whether it was a denial of due process and a violation of civilized standards of justice for the District Court to re-enter judgments of conviction after it had found, on the new hearing, that the star witness for the Government before the jury had given seriously false testimony, is watered down, in the Government's brief, into the proposition that the trial judge merely "commented" that the witness had given exaggerated testimony.

Thus, the Government seeks to blunt three of the issues the Court must deal with.

On the other two, the Government still refuses to face reality:

Rather than answering our challenges (Pet. 33, Br. 93) to cite evidence that Jury Commissioner Crooks selected or exercised judgment as to picking jurors, the brief erroneously asserts, without a scrap of evidence to support it, that Crooks did all but the ministerial work.

Rather than defending the instructions which permitted the jury to consider against Sullivan evidence which had not been admitted as to him, the Government appears to make the illogical argument that since Sullivan claimed he had made a voluntary disclosure, he had no right to complain about instructions to the jury.

The case which the Court has the responsibility of deciding is quite different from the case depicted by the Governmment's brief.

We will shortly revert to the fundamental, and the only proper questions presently in the case, but before so doing it is necessary to correct at least some of the erroneous evidentiary assertions by which the Government brief endeavors to color the record. It is to be noted:

First, the Government cannot and does not in any way

dispute the accuracy of the Statement of Facts in petitioners' brief. Nevertheless, it resorts to a so-called restatement of the case which, though some 40 pages long, does not attempt to show that the Government sustained the detailed charges it leveled in this Court in 1956 and 1957 and which this Court enumerated in its opinion (See our main brief, pp. 53-55).

Second, the presentation is not limited to the facts as found by Judge Nordbye in his 1959 opinion, nor to evidence relating to the disclosure. It is a hopelessly confused commingling of evidence from the pre-trial suppression hearing, the jury trial, and the 1958 reopened hearing, coupled with assertions or suspicions as to what the melange proves. In large part the record references show the argument is based on the discredited, "exaggerated" testimony of swindler and perjurer Lubben[2] at the trial, or his "doctored" records which are brazenly tabulated at page 19 and presented to this Court as believable although the trial court on the new hearing found them to be "exaggerated".

Third, the entire presentation is tinctured with the underlying assumption that petitioners set out to corrupt someone in the Revenue Service rather than to make a voluntary disclosure. That assumption, at this stage of the case, is wickedly wrongful—the Government charged corruption when the case was first here; this Court so recognized and allowed an unprecedented opportunity for proof of the charge; the prosecutors brought "more than 64 witnesses"[3] before the grand jury (G. Br., p. 102) and appar-

[2] See note 19, p. 87, petitioners' main brief.

[3] This number contrasts strangely, and in petitioners' favor, with the fact that the prosecutors brought only 4 witnesses before Judge Nordbye on the reopened hearing—two Treasury employees, Wright and Lima, and Huebner and Graflund, from all of whom the prosecutors had lengthy statements *before* the grand jury began serious work.

only learned nothing helpful, for even their much "refreshed" and willing witness Agent Lima testified he had no knowledge of anyone getting any money and had not even heard "by hearsay or any other way of any fix in the case" (App. 1513) and Agent in Charge Wright admitted:

> "I can state unequivocally that there was never any pressure brought to bear on me by any higher official . . . or anyone else, to close this case in any other manner than that provided by law and regulations." (App. 1016.)

In decency, that should have been the end of the matter. Judge Nordbye refused to find anyone had been bribed and conceded that the Government's evidence left its claims "shrouded in mystery" (App. 1768). Certainly so serious a charge as corruption of Internal Revenue cannot, in decency, be advanced upon mere vindictive and frustrated assumption—such does not take the place of evidence and findings.

Fourth, unable to show that it sustained the charges it made to this Court in 1956-7, the Government in substance abandons them and resorts to other derogatory charges—the new claims are, for the most part, as specious as the false charge made here in 1957 that Busby could not have made a disclosure in the winter or spring of 1948 because he actually then knew nothing about the over-ceiling transactions. We examine some of the new claims below:

PARTIAL CORRECTION OF STATEMENT OF CASE

It is not difficult, if one is willing to rely on testimony branded by Judge Nordbye as exaggerated and given by one (Lubben) repeatedly found to be a perjurer, and upon "doctored" reports, and to ignore all impeachment and contradiction, to spin together from more than 5000 printed pages a story adverse to petitioners. This the Gov-

ernment's brief does. It would be impossible, save by an inordinately lengthy brief, to correct all the errors in it, for correcting erroneous assertions is a far lengthier process than is the making of them. We can only select typical points, demonstrate their complete or partial inaccuracy and respectfully request the Court to discount the entire Government Statement in the light of such a demonstration.

Footnote 33, page 37, is a striking instance of persistence in advancing an indefensible position: As pointed out in our main brief, petitioners' version of the whole disclosure process is logical, sequential and convincing; *i.e.*, the advice from Busby in January, 1948 to disclose, the disclosure within a short time, the assembling of data, the usual delays, the importunities to Revenue Service to start the investigation, the preparation of summaries and eventual turnover of them to agent Lima. In 1956 the prosecutors felt they had to produce some logical *reason* why that story could not be true (See our main brief, pp. 81-82, 29-34). They attempted this with the false affidavit procured from Graflund that Busby knew nothing about the black-market transactions until July 1948. That having failed, a *new* reason is now substituted as to why the testimony of a January 1948 disclosure is false.

The substitute reason is as baseless as was the first one. The new theory is that Busby and Cain contrived false testimony as to a January disclosure because, so claims the writer of footnote 33, petitioners knew an informer had gone to the New York Internal Revenue Office on March 4, 1948; they feared such date might mark the disclosure "timeliness" date, *ergo* they falsely pushed the disclosure back to January. However, The record destroys the present claim: *It shows that Cain and Busby swore to the January 1948 disclosure long before they knew of the asserted March 4, 1948 informer.* They swore to a January

1948 disclosure in their affidavits of May 26 and 28, 1952 (R. 13, 18) attached to the Motion to Dismiss which was filed June 2, 1952 (R. 10); they testified to the January events in the suppression hearing held on November 12, 1952 (R. 150, 168 ff. 220 ff.). Petitioners knew nothing about an asserted March 4, 1948 informer in New York until Government agent Twohig testified during the afternoon of November 13, 1952 (R. 325, 336). Cain and Busby had told their story *on the record* nearly six months earlier and been examined on it in open court a day earlier; they were not concocting fiction to counter or antedate the asserted March 4 event of which they were ignorant.

Cain and Busby testified to the January 1948 disclosure because it was the time as they recalled it. As Busby testified, the approximate date was "pinpointed very well with the trip to New York as far as I was concerned" (R. 214, *cf.* Cain, R. 250). Judge Nordbye has found that the trip to New York *did* occur in early January 1948; that Graflund *did*, on that trip, reveal to Busby that there had been over-ceiling transactions and that Busby *did* promptly recommend a disclosure be made. The truth is natural and consistent. It is corroborated by the fact that on June 4, 1948 (a date that fortunately could be nailed down through hospital records), Sullivan was complaining to another agent of the Treasury about the Treasury's delay in investigating the case (App. 1566-1570) and by the fact that Sauber concedes that during the spring of 1948 Cain was nagging him to get the investigation under way (R. 285, 287). (And Sauber's fixing of the disclosure as approximately March 15 rather than in late January may well have sprung from desire to shorten the Treasury's record of delay and administrative ineptness. See R. 299.) The argument of present Government footnote 33 therefore, which if accepted at face value is poisonous to petitioners, is without foundation. It is simply a vicious inven-

tion of a brief-writer, apparently not too familiar with the record, who sought to create an inference beyond Huebner's testimony on the reopened hearing that "*after* the suppression hearing," or "*around* that time. I am not sure of the date" (App. 925) he heard it had been learned an informer had been in the New York office.

2. Despite the facts that Huebner got records from Lubben in February 1948 for the purpose of reconstructing the Lubben transactions (G. Br. p. 35, n. 29) as Sauber had requested (R. 178), that Huebner showed them to Busby during the spring of 1948 (App. 1129), that Graflund worked with them fruitlessly trying to reconcile them with his knowledge of the events (App. 1166) and had preliminary discussions about the figures with Cain and Busby in April or May (App. 1092, 1156-1157), and despite the fact that at the conclusion of the reopened hearing Judge Nordbye conceded "I do not mean to imply, however, that defendants had not attempted between January and July to gain information as to Lubben's books and records and as to the data such records would disclose as to his contentions regarding the over-ceiling payments made to Shotwell" (App. 1762) counsel persist in asserting that no work was done in assembling or preparing figures prior to July 1948. Thus, at footnote 13, p. 27 it is said: "Actually, * * * no work was done on such a compilation until July 1948;" "* * * Busby and the Shotwell employees did not work on figures for a voluntary disclosure from January to July 1948" (p. 25), and, prior to the Belden-Stratford meeting, "Graflund had not been asked by anyone to assemble or furnish any records or data relating to the black market receipts from Lubben" (p. 36). These statements are flatly contrary to the Government's own record. In part, they come from using the word "compilation" in two senses. It always was testified by Busby and Cain that the summary sheets and "recapitulation" were not written

down, put together or "compiled" until July 1948. But it is equally certain, as testified to originally and as still found to be true, that the work of assembling or "compiling" data from which to make the sheets and recapitulation went on intermittently from January or February 1948 until the task was finally finished (see Petitioners' main brief, p. 19). Yet, the present brief leaves the innuendo that *nothing* was done, thereby still seeking to build an argument that the disclosure did not take place.

3. The most sinister innuendo of the present Statement is the impression endeavored to be created that for a $10,000 "fix" furnished by Huebner, Cain procured someone's agreement to settle the case on the basis of a $20,000 tax bill.

It is true that Huebner and Graflund finally testified that Cain said he had worked out a $20,000 settlement, and Lima ultimately said he had prepared a $20,000 agent's report. Huebner alone testified that Cain asked him for $10,000 with which to "fix" the case and that he gave it to him. Huebner gave no objective details which could be checked as to where he got the $10,000, how he transmitted it, or why Cain did not put up the money himself. He simply made a naked assertion which Cain flatly denied (App. 160, 1).

Manifestly, *if* in fact there had been any agreement for a $20,000 settlement in August 1948, *if* Cain in fact had been boasting about it, and *if* Huebner had been calling Graflund on the long distance telephone to tell him about the happy event, word of it would have leaked out, if not immediately, certainly by the time of the suppression hearing in 1952, to say nothing of the trial in 1953. Mrs. Morrill, Shotwell's office manager (R. 746 ff.) knew and worried about the general problem; Roeser, who as Graflund's predecessor as Shotwell's comptroller had handled some of the

funds (R. 1700 ff.), did; Ericson, Shotwell's plant superintendent who sent out the so-called "unbilled" shipments (R. 1798 ff.), did. All appeared as Government witnesses in 1953; all were before the new grand jury in 1956. It is impossible that if there had been a $20,000 settlement which Cain revealed to Huebner and Graflund, that the others who, before the initial indictment, were deeply concerned would not have heard about it. However, Roeser, Ericson and Mrs. Morrill were not brought on in 1958 to corroborate the new story of a so-called $20,000 settlement which Cain had denied (App. 1608).

More startling, Huebner, when initially questioned during the reinvestigation in 1956, could not remember having sent a wire to Graflund, or of getting a telephone call from Graflund in which this alleged happy settlement, supposedly at a cost to him of $10,000, was discussed (App. 912).

Equally important, Lima, after numerous interviews and after being subjected to a lie detector test, did not even on his second tour before the new grand jury on October 8, 1956 say anything about the amount of the supposed tax, about a proposed $20,000 settlement or about an 870 Form (App. 1465-1466); even when on the stand before Judge Nordbye he "didn't have any recollection of how [he] arrived at this alleged figure of a $20,000 tax" (App. 1514).

There was, however, a factual situation from which the distorted present contention might arise: Shotwell had an unfavorable excess profits tax base; it had a claim under Section 722 of the Revenue Code for an approximate $250,000 tax *refund* pending at the time of the disclosure (App. 1279-1281). If that refund claim could have been prosecuted successfully, and even if the tax liability on the Lubben transactions was conceded to be at the high figure placed at the trial of approximately $286,000 the difference between the hoped for $250,000 refund and the possible

$286,000 liability would be somewhere between $20,000 and $40,000; such difference would have been the entire amount of cash necessary to square Shotwell with Internal Revenue. Gratlund admitted in 1958 that he was aware of the refund claim, although he did "not particularly" recall ever discussing with Cain that the 722 refund claim might be used as an offset against the possible liability on the Lubben transactions which, he says, was a "complex subject", that "would be for a tax man" (App. 1281). Huebner also admitted he was aware the refund claim was pending ~~but~~ that was about all he would admit for "they didn't take me into their confidence concerning the Company's tax problems" (App. 766).

Finally, as to the "fix": In his affidavit to this Court (Supp. Mo. Remand, p. 9), Huebner merely asserted that he gave two $5,000 payments to Cain who *later* "told me he had turned the money over to *someone* to take care of a tax fix." But by the time Huebner got before Judge Nordbye this was embroidered—he testified that Cain said *in advance* that he was going to give the money to a "Kennedy" who was the "in-between man" (App. 688). Cain swears nothing like this ever took place (App. 1608). In any event, either Huebner hadn't conceived the name "Kennedy" when he made his affidavit for this Court or, if he had, the prosecutors withheld the name because the story would not withstand investigation. And if some "Kennedy" was believed to be an "in-between man" in the non-existent bribe, why was he not indicted in the second indictment or, in the alternative, offered as a witness here?

Thus, the $10,000 "fix" or bribe theory rests upon contradictory words alone. While that testimony comes far from establishing bribery or corruption of any variety, it is apparent that Huebner attempted to, and did, cast himself in the role of an accomplice. There is no stronger rule than the one that testimony of an accomplice "should be subject

to close scrutiny and minute examination, and weighed with great caution." (See, for example, *Caminetti* v. *U. S.*, 242 U. S. 470; *Arnold* v. *U. S.*, 10 Cir., 94 F. 2d 499, 501.)

And on any question of credibility on this or any other point, it is to be noted that it is only the Government's star witness Lubben, who judicially had been found to be a perjurer in other cases, who is found here to have "exaggerated" his testimony to the jury. Only Government witnesses Huebner, Graflund and Lima are found to have been guilty of "glaring inconsistencies and contradictions" in their statements and prior sworn testimony (App. 1769). Contrasted to this petitioners Cain and Sullivan (and Busby) have been consistent throughout. Petitioners have earned enviable reputations for truth and veracity and produced outstanding witnesses from commercial, religious and public life to testify to that fact (R. 2686-2704).

4. In a further effort to lay supposed villainy against petitioners, the Government brief (p. 32) has a section entitled "The Scheme of Buy Out Lubben," arguing that in June 1948 Cain offered to form a syndicate to buy Lubben's property and tried to have the latter go to South America "in order," so it is said, "to deprive the Government of its key witness" or his records. This contention is based on testimony perjurer Lubben, partially supported by his lawyer, Davidson, gave to the jury in 1953. *If* it were true that petitioners by June 1948 had made no discovery, or had done nothing to prepare compilations of receipts made to conform with Lubben's "records," the contention, at least would make sense for there then would be a possible purpose in getting Lubben out of the country and disposing of his records. But once it was irrefutably established out of the mouths of Government witnesses on the new hearing, and found as a fact by judge Nordbye,

that petitioners *had* sought out and procured some of Lubben's records and *had* told the Government they were going to conform their reconstruction of the account to Lubben's claims, the contention becomes foolish. Petitioners, rather than concealing Lubben and his records, *had*, prior to June 1948, voluntarily gone to the Government, *had* told it that Lubben had paid Shotwell a large sum of money, and *had* said that in reconstructing the transactions they were going to prepare figures which conformed to Lubben's.

If well may be that this false claim that petitioners tried to spirit Lubben out of the country helped prejudice the jury against petitioners in 1953. But the record now demonstrates that that claim never had validity; it certainly can not be maintained on the present record. The jury may have believed this claim in 1953, but certainly Judge Nordbye did not in 1959 because he made no finding on it.

Lubben in fact did later move to Puerto Rico and for his own reasons and without inducement by petitioners.

The claim is another example of perjurer Lubben's direct inversion of truth. It was strongly contradicted when made (although the Government brief does not so indicate). Rather than being induced by petitioners to go to the Caribbean or South America, Lubben wanted to go and approached Cain and others for financing. Lubben was in serious difficulties with, and in mortal terror of, his racketeer former partner Giglio (see *Lawn* v. *U. S.*, 355 U.S. 339) who had warned him that if he ever talked he would "find himself in a cement box at the bottom of the Hudson River" (R. 1061).

According to Cain and his New York lawyer, Patrick Grace, Lubben, in late June 1948, telephoned Cain at the latter's hotel in New York and requested a meeting at a Riviera Club half way between Cain's hotel and Lubben's place in New Jersey. At the Riviera Club Lubben told

Cain he could secure a Coca-Cola or Pepsi-Cola franchise outside the country but would need a substantial amount of money. He requested a loan. Cain said that if anything developed and if Lubben actually got the franchise, to get in touch with attorney Grace. In late July or early August Lubben told Grace that he had, or was then securing, a passport for South America and wanted to know if Cain would lend him $40,000. Upon being turned down by Grace, Lubben went to see one Morley Cramer in ...on. From Cramer's office he telephoned Cain in ...hicago and said he wanted $135,000 from Cain and Cramer; Cain turned him down (R. 2081, 2559, 2563, 2621). Cramer verified the foregoing, testifying that he never heard of a syndicate to buy out Lubben but that in early August Lubben came to his office in Boston and said he was in trouble; that he needed $135,000 to go either to Haiti or the Dominican Republic. Cramer turned him down (R. 2074-2076).

The Government supplements its present argument by referring to Huebner's testimony at the new hearing that some time in July 1948 he attended a meeting with petitioner Sullivan and Ed Urban of the Close Candy Company at the Chicago Athletic Club at which there was a discussion as to buying out Lubben's business and obtaining his records. That testimony by Huebner is one of the pieces the prosecutors worked hard to get. In his early interrogations by the prosecutors on September 17 and again on September 26, 1956, Huebner "recalled nothing" of any such occurrence (see our main brief, p. 38). This is but one of the "glaring inconsistencies and contradictions" which Judge Nordbye admitted studded Huebner's testimony. Judge Nordbye's failure to make any finding as to a meeting at the Chicago Athletic Club must be taken as tantamount to a finding that Huebner was not to be believed on this point.

Such specious material should not be advanced at this stage of the case.

5. Perhaps of lesser importance than the matters we have mentioned, but indicative of the unfair technique employed in the Government brief, is footnote 16, page 24, which says that although petitioner Cain testified on the new hearing, he was asked only seven questions on direct, "*all of them on rather tangential matters.*" Cain was seriously ill. His doctor finally agreed he could go on the stand if his appearance was limited to a half hour (App. 1544, 1551, 1615, 1619). This permitted but limited testimony and the questions were restricted to new matters that had appeared on the hearing before Judge Nordbye. Instead of going to "tangential" matters, as Government counsel unfairly tell the Court, the questions went to what seemed to be important. Two were as to the alleged obtaining of $10,000 from Huebner with which to "fix" the tax case; Cain denied this (App. 1607). Counsel certainly do not regard it as "tangential" because they stress Huebner's version in their present brief. One of the questions produced Cain's denial that he ever told anybody he had settled the case for $20,000 (App. 1608). This is a point counsel do not regard as "tangential." Another brought out Cain's denial that he ever told Huebner to keep quiet, etc. (App. 1608). This is a point counsel still stress.

In other words, counsel are saying that when their "refreshed" witnesses testified to a point on the reopened hearing it was important, but if Cain denied the testimony the denial was as to a "tangential" matter. Such illogicality is, to say the least, confusing.

ARGUMENT.

I.

PETITIONERS WERE INDUCED BY PROMISES OF IMMUNITY TO SURRENDER CONFESSIONAL MATERIAL.

(Petitioners' Main Brief, pp. 12-26, 67-75.)

A. Because of the Promises They Came Forward Before They Were Accused.

When the case was first here the Government charged that petitioners did not come forward or prepare or surrender any documents because of the promises of immunity since, so it was claimed, they made no disclosure until *after* the Revenue Service had commenced an investigation and were motivated by the investigation. The Government promised to prove that petitioners were motivated to disclose and to turn over documents by knowledge of an already started investigation against Shotwell. However, the new hearing proved conclusively that the disclosure was made *before* any Government investigation of Shotwell. Indeed, the *only* investigation ever made was that which stemmed from the disclosure and the Government now, in complete reversal, admits: "• • • the defect which vitiates the disclosure is not untimeliness • • •" (p. 63): "petitioners were not • • • even approached by any Government agent prior to their disclosure" (pp. 43, 68).

It now conclusively appears that because petitioners wished to avail themselves of the offer of immunity they voluntarily came forward before they were approached by the Government or accused of any wrongdoing and disclosed Shotwell as having filed erroneous returns. They

were told to assemble such information as they could as to the over-ceiling *receipts* and proceeded to do so. It is that computation or compilation, shown by Government witnesses Huebner and Gratlund not to be accurate but to be exaggerated to fit the "exaggerated" claims which Lubben was making, that is now said to be the damaging "admission" that could be introduced against them on a criminal trial.

B. Probable Truth or Falsity of Declarations or "Admissions" Induced by Promises of Immunity Is Immaterial to a Decision as to Their Constitutional Admissibility.

We argued in our main brief (pp. 74-5) that the holdings of the District Court and the Court of Appeals, (wholly ignoring the constitional question), were that confessional material obtained from a potential defendant by promises of immunity may be introduced against him if part of it is false. The Government now professes to agree, as it must, "that the admissibility of an inculpatory statement [does not turn] on its truth or falsity or on the purity of the motives" of the declarant (pp. 44, 69). But it backs away and quite to the contrary of what it has admitted argues that the documents at bar were admissible because they were a "half-truth disclosure" (p. 61). It argues, "It is inconceivable that [the rule barring use of confessional material] should operate to exclude a declaration in which damaging admissions are inextricably intertwined with false, self-serving exculpatory statements" (p. 58).

The Government's brief is a contradiction in terms for most of it is an argument that truth or falsity *should* be considered in determining the constitutional and common law admissibility of confessional statements. It argues that

"admissions" which, by its own new evidence, "admit" much that did not occur (see our br., pp. 16-18, 22-23) may be used to convict citizens if "inextricably interwoven" with the "admissions" are exculpatory statements which also are partially false (G. Br. 42, 44, 61, 72). Until Judge Nordbye's decision and the second Court of Appeals decision herein no American court had ever embraced so noxious a doctrine that confessional material *should be admitted because it is false.*

The Government argues in substance that the disclosure was not induced by the promises of immunity but was a simple voluntary act of individuals intent on defrauding the Government. It would read the promises of immunity out of the record. But that cannot be done. *There is not a scintilla of evidence that petitioners would have come forward had the promises not been made.* Strangely enough, the Government concedes "petitioners may have been prompted, in part at least, by the desire to avoid criminal prosecution" (p. 60).

Then follows an argument to the effect that a citizen always knows that when a prosecuting official asks for statements or confessions he wants truth, from which it is argued that if the declarant does not tell the full truth he is not fulfilling the condition laid down by the officer; therefore, he is not relying on the promise of immunity but is engaged in some form of chicanery; therefore, his "admissions", even though known to "admit" things that did not occur, may be received against him in criminal trial. No authority, decisional or philosophical, is offered for this startling doctrine which is squarely counter to many decisions of this Court that confessional material, even though probably completely *true*, cannot be received if induced or procured by impermissible means (See *Rogers* v. *Richmond*, 365 U. S. 534; *Lisenba* v. *California*, 314 U. S. 219, 236; *Blackburn* v. *Alabama*, 361 U. S. 199, 206).

Finally, the Government admits that a defendant would "obviously be entitled to the exclusion of that confession, even though it may have been false and intended to deceive" if there had been "intense psychological pressure * * * to extricate himself from his predicament" (p. 69). The Government's present position that the psychological force of a promise of immunity should be measured and be found insufficient is precisely contrary to *Bram* v. *United States*, 168 U. S. 532, which at page 543 adopts Russell's statement:

> "A confession can never be received in evidence where the prisoner has been influenced by any threat or promise; for the law cannot measure the force of the influence used or decide upon its effect upon the mind of the prisoner and therefore excludes the declaration if any degree of influence has been used."

Bram, at page 554, cites with approval *Reg.* v. *Moore* (1852), 2 Den. C. C. 522, for the proposition "that if the threat or inducement was held out, *actually or constructively* by a person *in authority*, it cannot be received, *however slight the threat or inducement.*" (Italics in original.) Certainly here a considerable degree of influence was used and this the Government concedes at page 60.

The Government brief argues that no inducement by one in authority would bring constitutional protections into play unless the pressure was so great that the citizen's "will has been overborne and his capacity for self-determination critically impaired" (pp. 43, 65, 67, 69). This is the type of uncritical reliance upon one opinion in *Culombe* v. *Connecticut*, 367 U. S. 568 which was prophesied when that opinion was announced (367 U. S. at 636). *Culombe* involved no promise of immunity and is almost wholly beside the point; nor did it purport to overrule *Bram*. The Government brief writers answer themselves

when they concede an inducement to a disclosing taxpayer might be enough so that taxpayer (not described as overborne in will) "might be entitled to the exclusion of the disclosed documents" and the brief admits a false promise would require suppression, for that would be "trickery • • • false pretenses" (p. 69) although no overbearing of will was involved.

Finally most of the Government brief labors to convince this Court the petitioners did not come into the Treasury to make what the brief writers call a "good faith disclosure." Yet when we come to the constitutional question of whether "good faith" or lack of "good faith" determines the right to invoke constitutional protections, a question Justice Black originally indicated has not been decided by this Court, the Government twice says it wishes "to emphasize that it is not our position that the admissibility of an incülpatory statement turns on • • • the purity of the motives which impelled it." (pp. 44, 69).

Our brief at p. 70 cited *Rex* v. *Barker*, 2 K. B. 381 (1941) where the British courts squarely held that a taxpayer's demonstrated lack of good faith in presenting false documents for the purpose of reducing tax liability under the English voluntary disclosure doctrine did not permit those documents to be used to incriminate the taxpayer. The Englis' authority is sought to be distinguished away by the Government (pp. 63, 64) because two sets of documents were involved, produced at different times. That, while true, is immaterial for it was the *false* documents which the Court specifically held could not be used, saying at p. 384:

> "• • • the court is of opinion that if, as a result of a promise, inducement or threat, such books and documents are produced by the person or persons to whom the promise or inducement is held out, or the threat

made, those documents stand on precisely the same footing as an oral or a written confession which is brought into existence as the result of such a promise, inducement or threat.

"The result is that, in the opinion of the court, these vital documents and books, namely, the ledgers and the working papers of the appellant, were wrongly admitted in evidence and in those circumstances the conviction of the appellant cannot stand."

Reduced to essentials, we suggest that the pervading vice of the Government position is that it confuses the question as to whether petitioners performed completely enough under the voluntary disclosure program to be morally entitled to immunity, with the wholly different question as to whether the Government, having induced petitioners to come forward by promises of immunity and to make damaging "admissions", could then constitutionally use those "admissions" against them in a criminal proceeding. What we are concerned with here is a basic constitutional question of criminal law, not niceties of the disclosure program.

C. Common Law Inadmissibility.

The Government makes no effort to answer our argument that the "admissions" at bar, apart from the constitutional prohibition, were inadmissible at common law. At common law confessional material obtained by promises of immunity is inadmissible because of its inherent unreliability (see main br., pp. 72-74). This case furnishes a classic example of the wisdom of that rule. Petitioners, to gain immunity, were willing to "admit" that Lubben paid Shotwell many thousands of dollars he had not paid at all. Both Huebner (App. 797-800, 967-968) and Graflund (App. 1063, 1245-1247), testifying as Government witnesses, so agreed. Yet this "exaggerated" confession was used to convict petitioners. We suggest such a process is abhorrent to civilized standards of justice.

II.

JUSTICE WAS ABUSED IN THE REMANDMENT PROCESS.

(Petitioners' Main Brief, pp. 76-84; 28-48.)

The Government makes no genuine attempt to justify its action of inducing this Court to withhold action when this case was first here so that for approximately 15 months witnesses could ceaselessly be interrogated. The actions of the prosecutors in 1956 and 1957, the calculated withholding of highly material evidence from this Court on the remandment proceedings, and the elusive arguments of the present Government brief are in shocking contrast with the concession that a duty of "excessive candor" (p. 98) was owed.

There is not the faintest indication in the record that the prosecutors ever intended to come clean with this Court, the District Court or petitioners, (and we suspect the Solicitor General was never fully advised). It must be remembered that the prosecutors procured their "refreshed" evidence prior to this Court's decision in *Jencks* v. *United States*, 353 U. S. 657, on June 3, 1957. They doubtless thought, when they insisted on their Motion to Remand, that the witnesses' statements which contradicted the sweeping assertions of the Russo affidavit would never, in a criminal case, see the light of day. *Jencks* put a salutary end to that. And they "had not anticipated" (App. 834) that counsel for petitioners could force production of the relevant and devastating grand jury minutes.

The fact is that on December 6, 1955 the Justice Department, acting on the hearsay affidavit of detective Yaden, asked this Court to withhold action; on June 1, 1956 a second request for delay was made (see "Chronology," App. C, Pet. Br.), even though by that date each of the witnesses the Government ultimately produced had been

interviewed and reinterviewed (see "Chronology"). The stories of the witnesses, as of June 1, 1956, were not deemed satisfactory for display to the Court.

On September 19, 1956 Prosecutor Russo, acting as a witness, made the hearsay affidavit attached to the Motion to Remand. That affidavit contained the assertion "that prior to June 21, 1948 * * * no disclosure, voluntary or otherwise, had been made." (See "Chronology".) With that affidavit the prosecutors placed themselves in a position where somehow they had to make good on the claim; inevitably the witnesses had to be further pursued. They were:

Thereafter came into existence for the first time Huebner's asserted recollection of a meeting with Sullivan and Urban at which destruction of Lubben's records was discussed;

Thereafter came into existence for the first time Lima's testimony that he had prepared and destroyed a Revenue Agent's report and had made a $20,000 tax computation;

Thereafter came into existence for the first time Graflund's testimony that he had not informed Busby of the black market dealings in January, 1948 and that Busby knew nothing about them until approximately July 1, 1948;

Thereafter came into existence for the first time Huebner's assertion that he had been kept off the stand on the original proceedings because he threatened to tell the truth. (See "Chronology" App. C, main br. for all time steps.)

The virtually unbelievable, were it not for the documentation of this record, fact is that the most striking pieces of "new" evidence ultimately tabulated in this Court's opinion, and which motivated it in granting the order of remand, came into existence weeks or months *after* the Mo-

tion to Remand was filed. No mere question of credibility is involved—the matter goes much deeper—it is a question of when and how the "new" evidence came into being.

If this Court were to condone what went on here it would, in effect, overrule *U. S. v. Zborowski*, 2 Cir., 271 F. 2d 661, 668, which holds that prosecutors must present their evidence in its "true colors" and cannot conceal, but must voluntarily reveal grand jury evidence which contradicts or bears on the credibility of their witnesses.

Moreover, if the Court were to condone what went on here it would be saying that federal prosecutors are free to apply for partial remandment orders so that they may gain time to get witnesses to change, or improve their uncoached testimony—testimony not given at the behest of any defendant but by witnesses wholly out of control of the defendants and "cooperating" with the Government before a grand jury. The effect of such condonation upon standards of criminal justice throughout the country would be sorry indeed. Any experienced lawyer or judge realizes that a prosecutor, federal or state, holds a powerful office; he moves in an area in which emotions and ambitions frequently are involved. There are, unfortunately, some overly ambitious or overly zealous prosecutors. Judicial condonation of the sophisticated indecency inherent in the methods by which the Government testimony here was produced would stand as an invitation to such prosecutors to use like tactics.

The Government's brief makes four main points: ***First***, it says that all that was involved was a mere question as to credibility of its witnesses. This patently is not so. The Government made, in this Court, one of the most unfavored motions in the law—a motion for a new hearing or trial on the ground of asserted newly discovered evidence. But not a witness, save Huebner, was "new." It is highly mate-

rial to such a motion precisely how and when the asserted "new" evidence from old witnesses came to the attention of the movant. (See, for example, *U. S. v. Johnson*, 7 Cir., 142 F. 2d 588; approved by this Court; see 327 U. S. 106.)

Second, the Government's next argument is that Graflund, Huebner and Lima did in fact give before Judge Nordbye precisely the testimony this Court was advised they would give. This is merely saying that pressure was successful. The answer is twofold: *First*, Huebner did *not* give precisely the testimony this Court was advised he would give. On his most sinister and sweeping charge of a conspiracy of perjury, namely the assertion that he originally had been kept off the stand because he threatened to tell the truth, Huebner gave no testimony whatsoever before Judge Nordbye! *Second*, the question is not whether the witnesses stuck to the "new," improved testimony that had been procured from them after months of brain-washing and "refresher courses." The question is whether that testimony possibly can be true; further, true or false, whether our system of justice permits testimony to be procured in this fashion; and, finally, all else laid aside, whether the prosecutors were under a duty of candor to advise this Court and petitioners that the affidavits they finally tendered here to "cast the darkest shadow" upon petitioners were nothing more than recantations of previous solemn testimony given by the same witnesses to a federal Grand Jury at the behest of the prosecutors. How can the Government possibly claim it lived up to its admitted (p. 98) duty of "excessive candor"?

Third, the Government says (p. 91) that with one exception "every statement contained in Graflund's affidavit and every statement contained in Huebner's affidavit, *if mentioned at all in Judge Nordbye's order*, was found to be the truth." The weakness of that argument is its

qualifying phrase "*if mentioned at all.*" The fact is that in instance after instance Judge Nordbye shrunk from the disagreeable facts of the record and failed to make square findings, pro or con, on issues on which clear findings should have been made. His opinion is not keyed or responsive to the detailed issues enumerated in this Court's opinion (See our main br., pp. 53-55).

Fourth, the present brief asserts that Judge Nordbye found that Cain, Busby and Sauber testified falsely in many respects as to the "time and manner" of the disclosure (p. 93). This brings us down to pretty small potatoes—when the case was first here counsel were not quibbling about "time and manner." Mr. Russo's affidavit was that "*no* disclosure, voluntary or otherwise," was made prior to June 21, 1948; it was charged "the testimony which placed the date in . . . January or March 1948 was perjurious" (Br. for U. S. No. 1, O. T. 1957, p. 33); "*no* move was made" prior to June 21, 1948 (*Idem*, p. 25). The overwhelming thrust of the charge was that literally *nothing*, *no* disclosure, *no* collection of figures, occurred until after June 21, 1948, and that because Huebner had threatened to tell the truth and to say that nothing had occurred he had been kept off the stand. All of that has been proved false.

Let us see precisely what Judge Nordbye found as to time and sequence. This examination will take us some distance from our principal point but there is no other way of meeting counsel's generalized assertion.[4] Judge Nordbye found:

A. That Graflund did reveal the black market facts to Busby in early January (App. 1760).

4. We think a detailed factual argument is not proper here, and that the Government's contentions in this regard should be ignored. If the Court agrees with us it may wish to skip to page 32 of this brief.

B. That Busby "stated at the first suppression hearing that he was prompted to make the disclosure to Sauber at this time [January] because he first learned of the * * * transactions from Graflund when the two were together on a train coming from New York" (App. 1758).

C. "The exact time that Busby made a visit to Sauber's office is difficult to pinpoint * * * it is fair to find that * * * [it was] some time before" June 21, 1948 (App. 1760-1); and apparently some time before June 4, 1948 because the Judge accepts Horgan's testimony that Sullivan was complaining about the delay of the Revenue Service in closing the case (App. 1761). "It is difficult to understand why Sullivan became concerned, at that early date [June 4, 1948], over the so-called delay when no figures had as yet been presented to any revenue officials * * *" (App. 1761). (It is not "difficult" to understand under the sworn, unimpeached, unrecanted, uncontradicted testimony of respectable citizens Cain, Busby and Sauber that the disclosure in fact was made in the late January-early March period and under the sworn, unimpeached, unrecanted, uncontradicted testimony of the same witnesses that they were not to "present" figures but were to await the appearance of a Revenue Agent at the plant who would conduct a regular investigation or audit. There is not a scintilla of evidence that the disclosure was made any later than "approximately" March 15, the time as Sauber recalled it. Judge Nordbye's "difficulty" stems solely from the impermissible process of attempting to allow speculation as to a later date overcome evidence that it occurred earlier.)

D. "It is fair to find from the evidence that Sauber informed Busby, as well as Cain * * * to disclose the entire black-market premium receipts, *and to make a computation of all the alleged offsetting premium disbursements which Shotwell allegedly made for raw materials*" (App. 1761). (There is not a scrap of evidence in the entire record that

remotely justifies the italicized portion of the finding. On the contrary, the evidence is utterly clear and undisputed that Sauber always told Busby and Cain, *as then Treasury regulations required*, that Shotwell's "premium disbursements" were immaterial. The inclusion of so totally erroneous a statement in the findings demonstrates how confused the matter finally became—it demonstrates also that the trial court had focused attention so completely on the "Disbursement" section of the "recapitulation" that he persuaded himself there must be testimony somewhere that Sauber had ordered it to be prepared. There is no such evidence. The portion of the finding we have italicized should be ignored as wholly without support. If this criticism be thought too harsh, we suggest that Government counsel, on oral argument, show where the evidence to support the finding is. And the point is important, for it seems to be the foundation for the unsound argument that petitioners hoped to gain a tax advantage by the "Disbursement" section of the "Recapitulation.")

E. "Cain's plans were to effect an early settlement * * * before any government agents pried into the company's books and records" (App. 1762). (Not only is there no evidence whatsoever of such a "plan" but the finding is grossly illogical and flies in the face of evidence which the trial court credited. *1st*, the trial court credits Horgan's testimony that on June 4 he was implored by Sullivan to intercede with Sauber to send an agent "to pry into the company's books and records." *2nd*, the court credits, we say improperly, Huebner's claim that "in the summer of 1948" Cain said he had been able to settle the case for $20,000 and that Huebner was so relieved he promptly telephoned Graflund "*who was on his vacation.*" *If* the Huebner testimony be believed the vacation necessarily places the alleged event in August 1948 *after* a Revenue

Agent had been assigned to "pry into the company's books and records" and actually had started the prying. *3rd*, Busby, Cain and Sauber all swear that Sauber said from the beginning that an agent would make an investigation or "audit." *4th*, it imputes a remarkable degree of ignorance to an intelligent business man (Cain) to assume that he ever entertained the impossible notion that the Treasury would settle Shotwell's case without examining its books.)

F. "• • • Busby is wrong when he states that he and the Shotwell employees were working on figures for a voluntary disclosure from January 1948 to June 1948" (App. 1760). (But Busby never testified in the sweeping fashion the finding indicates; he said the work "covered that span of time" but was intermittent, "part of the time I didn't work on it." See our main brief, page 19. Inconsistently, the Court also found, "I do not mean to imply, however, that defendants had not attempted between January and July, 1948 to gain information as to Lubben's books and records as to the date such records would disclose as to his contentions regarding the over-ceiling payments • • •" (App. 1762). This concession was compelled by *Government* evidence that Huebner had procured some of Lubben's records, had delivered them to Graflund who worked with them fruitlessly trying to reconcile them with Shotwell's version of what had occurred. See recitals at pages 15, 19, orig. br. In April or May Graflund had "preliminary discussions" with Cain and Busby on the problem (App. 1156-1157). As Cain put it, "The agent didn't appear and he didn't appear, so it dragged" (R. 233)—unfortunately a normal and natural sequence.)

G. "March 15, 1948 was just an arbitrary date which was agreed upon by Cain, Busby and Sauber in that the latter would testify that it was about that date when Busby first visited him. But obviously it was much later when

Sauber was informed that Shotwell was the offending taxpayer" (App. 1764-5). (The foregoing sentences are naked conclusion or speculation unsupported by a scrap of direct evidence. They depend on accepting the much impeached and contradicted Huebner's 1958 testimony that during the 1952 disclosure hearing he said to Cain that he thought June 15 "was supposed to be" the disclosure date and that Cain told him to be quiet, as against Cain's denial (App. 1608) of any such conversation. From the Huebner story it is rationalized that March 15 was an artificial, contrived date. But certainly if Cain was going to contrive an artificial date he would not have contrived one that fell during a period when he was not even in Chicago but was in California helping run a fund-raising party for his church (App. 1422-1427). And if he contrived March why did he testify to January?)

II. "It was not until some time in July, 1948, however, that any concerted effort was made by this defendant to make up a so-called voluntary disclosure" (App. 1762). (We respectfully call attention to the insight the foregoing statement sheds on the erroneous legal standard that governed much of the trial court's thinking—implicit in that statement is a refusal to recognize the act of coming forward and disclosing a taxpayer as an offender as the act of "voluntary disclosure;" implicit in it is the concept that only the subsequent presentation of correct figures constituted a "voluntary disclosure"—such concept is wholly wrong as the statements of the policy clearly demonstrate.)

I. Out of the foregoing confusion, and reconciling as best one can the trial court's utterances, the following emerge as *facts conceded by the trial court:* On or about January 11, 1948, Busby learned of the black-market transactions and promptly advised that a disclosure be made; promptly efforts were made to learn what

Lubben's claims were and to reconcile them with Shotwell's information; at some unspecified date *after* March 15 but *before* June 4, 1948, the Busby-Cain-Sauber meetings took place *at which the parties said and did precisely what they originally testified to*, the only difference, in the court's view, being that the conferences occurred at this later date rather than in the January-March period as we contend was the fact; that, whatever the date may have been, no independent investigation of Shotwell had been commenced so that the disclosure was timely; the assignment of Lima to examine the taxpayer was a direct result of, and pursuant to, the disclosure rather than in spite of it.

J. Finally, the direct and specific charge of perjury was made here—petitioners were entitled to a square finding on it and did not get it. Judge Nordbye's opinion skirts the issue and does not use the term "perjury." Thus he says only that Busby is "wrong" in fixing a January date. This is quite different from a finding of wilful falsification. If petitioners, on the original proceeding, had served up a perjurious concoction of events that had not occurred the court should, and doubtless would, have so found. And it is to be noted that the 1956 grand jury before which the evidence now here was developed refused to indict anyone for perjury because they had said that the disclosure was in the January-March period!

The forgoing analysis demonstrates that if all of Judge Nordbye's findings supported by any evidence be construed against petitioners, they amount only to a finding that the disclosure took place precisely in the *manner* originally described but at some undetermined time between March 15 and June 4, 1948 rather than in the late January-early March 1948 period. We do not think the March 15-June 4 conclusion of Judge Nordbye can be permitted for there is mere speculation and no evidence of a disclosure at

that date. It is conceded that the disclosure was made. The only evidence, and it is logical and consistent, remains uncontradicted, unimpeached and unrecanted that it was made in the January-March period. That evidence cannot be wafted aside simply because it is displeasing.

With the single exception of the date, Judge Nordbye did not find in any way that Busby or Cain or Sauber misrepresented to the Court in their 1952 and 1953 testimony what Busby and Cain had told Sauber. He finds, in essence that they correctly described what went on in the disclosure but that the disclosure itself was fraudulent, in his eyes, because, when disclosing for Shotwell, they should also have informed upon themselves personally as *presumed* personal tax violators.[5] But that assumed fact, which petitioners strongly deny, would, under 1948 tax rules have made no difference in Shotwell's tax liability.

* * * * *

When the case is viewed in retrospect, the following things are clear:

1. When the Treasury induced the Department to apply for delay in this Court on December 1, 1955, it did not have any evidence in direct conflict with the testimony as to the disclosure.

2. When the second application for delay was made, all four of the Government witnesses subsequently produced had been interviewed. They were fully "cooperative" but their stories *at that time* would not support a motion to remand.

3. When the Motion to Remand was filed in October 1956, Graflund, Lima and Huebner had all testified at

5. The looseness that prevails in the case is typified by the fact that counsel (and the trial court) feel free to berate petitioners Cain and Sullivan as personal tax violators in spite of the fact that their personal tax returns are not even in the record.

length before the grand jury but their stories still were not deemed satisfactory. The motion was supported only by the hearsay affidavit of Prosecutor Russo.

4. After October 15, 1956, there came into existence for the first time, after repeated further interrogation of the witnesses, the most striking pieces of evidence ultimately presented to this Court in the form of the Huebner and Gratlund affidavits and the representations as to what Lima would testify.

5. The basic claims to this Court that Busby could not have made a disclosure until after July 1, 1948, that no work was done on assembling figures, that no disclosure was made until after July 1, 1948, that Huebner had been kept off the stand because he threatened to tell the truth were false.

Not an inkling of the process of eroding away the witnesses' original sworn, uncoached evidence was ever given to this Court.

No real defense is even now made for the relentless interrogations of the witnesses detailed at pages 28-47 of our brief,—only that Gratlund and Huebner were not subjected to the "*intimidation of coercion*" (p. 103). (Observe that even that weak claim is not made as to Lima.)

To assert that the prosecutors fulfilled their obligations of decency and candor or that this Court was fairly dealt with would be to deny words their usual meanings.

III.

A NEW TRIAL SHOULD BE GRANTED BECAUSE THE GOVERNMENT'S NEW PROOF DISCLOSED THAT THE ORIGINAL CONVICTIONS WERE SECURED ON FALSE TESTIMONY.

(Petitioners' Main Brief, pp. 84-89.)

Nothing in the diffuse Government brief contradicts in any effective manner what is said in our main brief. Lubben has been found to be a perjurer in other cases and found to have delivered "exaggerated" testimony here. "Exaggerate" means to falsify deliberately. Struggle as they will, counsel cannot wash away that finding.

The Government's attitude on the trial, and even today, is in striking contrast with what it said about the amoral Lubben in the *Giglio* and *Lawn* cases in New York, where he also was used as a witness. There the prosecutor told the jury that Lubben was:

> "• • • a perjurer and a black marketeer and practically anything else you care to talk about." (R. 2589, *Giglio* v. *U. S.*, 355 U. S. 339.)

Lubben was thus presented in his "true colors" in New York.

But in Chicago trial counsel for the Government vouched to the jury in this case:

> "I will tell you who David Lubben is. He is an honest, honorable, American citizen. • • • Dave Lubben is telling the truth (R. 2937).
>
> "What you have seen are the [Lubben] records which were kept by competent, honest, people." (R. 2879.)

And present counsel ask this court, despite the record here, to accept Lubben as truthful—to send citizens to prison on his "exaggerated" words.

Obviously in 1953 Prosecutor Lockely was in grievous error as to Lubben's "honorableness." And Judge Nordbye agrees with us, for he found on the new hearing (App. 1758):

> "* * * that Lubben may have exaggerated the amounts of the payments that he and his confederates made to Shotwell is entirely probable."

The foregoing is not a finding of inadvertent mistake by Lubben, but is one of willful "exaggeration," *i.e.*, perjury. The finding is not a mere "remark" or "comment" by the court, as the Government's brief now would make it; it is as much a finding of fact as any statement in Judge Nordbye's opinion.

Had the jury at bar been advised by the United States attorney that Lubben was a congenital perjurer rather than having dinned into it that he was "an honest man," had it been advised, as the fact was, that Lubben's purported books were not true but were "doctored," it well might have believed that at least petitioners Cain and Sullivan, who took the stand and protested their innocence, were innocent.

The inescapable fact is that the trial judge found in 1959, not that Lubben was "mistaken," but that he "exaggerated." The latter is a polite and euphemistic term for lying. To affirm these judgments would be to send petitioners to prison on known lies.

The Government brief would excuse all this by asserting that nevertheless it is plain that petitioners had appropriated to their own personal use "hundreds of thousands" of dollars of black market money. That is not the asserted crime for which they were indicted. Nor is it a question for courts or prosecutors to decide; it is for a jury in a fair trial. And the claim is unsound: First, "hundreds of thousands" depends upon accepting at face value Lub-

ben's claims as to the gross amount he paid. But it is agreed his claims cannot be accepted. Necessarily a far smaller gross sum was involved. The Government proof showed that large amounts of money actually were spent by Shotwell for raw corn. Any reasonable evaluation of the evidence necessarily places such expenditure figures at somewhere between $150,000 and $200,000, perhaps more. Additionally, Huebner admits he personally nipped out $45,000. If what Huebner took be added to what Shotwell necessarily spent for corn, there simply is not a balance of "hundreds of thousands" of dollars to be accounted for. Finally, in any event, these were questions of fact to be determined by a jury which did not have the United States solemnly assuring it that testimony which in fact was perjured or "exaggerated," was true.

Much of the Government brief on this head is a detailed jury argument that Lubben should be believed. The Government endeavors to take the sting out of the fact that in 1953 the trial court found Lubben was "truthful" and "sincere" but contrariwise in 1959 found that he had "exaggerated" and out of the fact that both Huebner and Grathund, testifying as Government witnesses, either said that Lubben had "lied on the stand" or was "mistaken" as to substantial items.

Plainly the evidentiary minutiae of a 5,000 page record cannot be reviewed in this court. If the court wishes to examine some of the Government's present contentions it will find some answering material in the appendix hereto.

It will not do to say, as the Government does, that this case may be distinguished from *Mesarosh* or *Communist Party* because it appeared in those cases that testimony of government witness was "substantially untrue" while here it is counsels' opinion that Lubben's testimony was "*substantially* true." In *Mesarosh* there was no determina-

tion as to whether the testimony Mesarosh had given in the case in question was substantially true or false; merely that in *other* cases he had given untruthful testimony and his standing as a witness was so wholly discredited as to taint the record. And in *Communist Party* the Court pointed out that a reviewing court could not remove the taint of perjury by simply finding that there still was in the record ample innocent testimony to support the Board's findings. In this case false evidence "exaggerated" evidence appeared before sentencing: Judge Nordbye found it was "exaggerated." Justice can be accomplished only by cleansing the record of "exaggeration."

IV.

THE JURORS WERE ILLEGALLY SELECTED.

(Petitioners' Main Brief, pp. 90-107.)

A. Jury Commissioner Crooks Delegated His Duty of Selection.

Rather than answering our challenge to specify one bit of evidence that the Jury Commissioner exercised the faintest degree of judgment or appraisal in selection of any of the jurors, grand or petit, the Government resorts to the generality that everything Jongsma did was under the supervision and direction of Crooks. This, in a generic sense, is true; it is true whenever a duty is delegated. But it is not true, as the Government erroneously asserts (p. 109), that "Crooks did not delegate; nor Jongsma exercise, the ultimate responsibility for deciding from what source the names of prospective jurors would be solicited" (G. Br., p. 109). That statement is flatly contrary to the record:

> Q. "And did you tell him [Jongsma] from what sources to get names?"

Mr. Crooks: "No."

Q. "You left that up to him?"

Mr. Crooks: "Yes. I assist him."

Q. "He makes the decision as to what names to get?"

Mr. Crooks: "Yes." (S. 242.)

Crooks was asked whether at any time in a four and one-quarter year period letters were sent to postmasters to furnish prospective names and said "I can't tell you" (S. 235). He agreed that it was "fair to say that Richard does the work and gets the names and [he paid] Richard" (S. 236). What more inclusive answer could be asked for than "He does all the work, and I take all the honor, if there is any" (S. 229).

Thus Jongsma alone exercised judgment as to whether James C. Mullaney would be a suitable juror (App. 323) and the same for all the others (see App. 323, *et seq.*). Jongsma accepted a juror who served in this case but who had a hearing defect that would interfere with his service as a juror (App. 327). He "accepted" some jurors from whom he had no questionnaires and about whom he knew nothing (App. 325).

In passing on the questionnaires returned by the jurors Jongsma regarded each question on the questionnaire as material and affecting the juror's eligibility to serve (App. 328). But this plainly was not so. Several of the questions, although eliciting interesting information, did not affect the prospective juror's legal eligibility (S. 253-255). Crooks, instead of telling his delegate how to do his job, "told me to use my discretion" (App. 336), and rather than telling him from what sources to get names "left that up to him" (S. 242).

Insofar as sending letters to various organizations for names, Jongsma alone decided which of the "various labor

organizations, clubs, churches, church organizations, etc." (App. 324) he should solicit; not Crooks, but "I," Jongsma, "would decide which counties we should work on in getting names at any time" (App. 351).

Jongsma went through the "Redbook" section of the telephone directory and decided to which clubs or organizations to send requests for jurors (App. 355). Only Jongsma read the questionnaires and made the decisions as to who to include or exclude; only if he was puzzled would he go to Mr. Crooks and ask what to do and that was only in a relative "handful" of cases (App. 360).

The Government flippantly suggests that all that Jongsma did was to determine whether prospective jurors, according to their answers in the questionnaires, fell within the statutory exemptions or disqualifications and that such was a job which "could just as well have been performed by an IBM machine" (G. Br., p. 110). Forgetting the flippancy of that argument, the cold fact is that so far as determining strict legal eligibility an IBM machine probably could have done a *better* job than Jongsma did for an IBM machine could have been "taught" or "keyed" as to which of the questions in the questionnaire went to statutory eligibility and which did not, and could have been keyed to show that volunteers were illegal under the law of Illinois, a fact of which Mr. Jongsma was ignorant (App. 337) and which ignorance was reflected in the choices he made. But we have not yet arrived at a point in this country where the delicate exercise of judgment of selecting those of our peers who will determine our fates is to be left to machines.

If illegal delegation of discretionary duties and exercise of judgment was not proved in the case at bar, it is hard to see how it ever can be proved. Most of what is said at pages 108 and 109 of the Government brief simply cannot be supported in the record.

B. Volunteers Are Illegal Under the Law of Illinois.

The Illinois statute, which applied to federal jurors at the time the jurors here were selected, flatly disqualified all volunteers, not merely those who might volunteer when the sheriff went on the street to fill an incomplete venire. If the court will refer to Section 13 of the statute set forth at Appendix page iii of our main brief it will see that Section 13 is in three separate sentences. The first sentence pertains to filling an insufficient panel. The second sentence is general and disqualifies *all* volunteers. The third sentence is general and pertains to all volunteers or persons seeking to place volunteers upon juries.

As to the evil of the system of volunteers, we refer to the main brief. Government counsel have been unable to cite a single case that approves the practice of accepting volunteers. There have been cases which have excused officials who have accepted volunteers where none of the volunteers were traced to the particular jury which sat or where the volunteers were so few in number as apparently not to constitute a severe problem. There is no case that has come anywhere near suggesting that a jury is legally composed when, according to the Clerk who should know best, approximately 20% of his nominees were volunteers (S. 169) and where 39% or 43% of the indicting grand jury were volunteers (see our main br., p. 99). If such a system were to be approved, this Court would be opening the way for pressure groups to infiltrate themselves on to federal juries, to destroy the "cross-section" requisite for juries and to vitiate the system.

C. The Methods Used by the Clerk Were Improper.

There have been various cases in which limited use of the sponsor system as a means of obtaining jurors has been approved but none has approached what the clerk did here. It is plain that the clerk was searching for what he subjectively deemed to be "good" jurors (S. 126, 127, 128) rather than to obtain a true cross-section. His methods could not, and did not, produce a cross-section.

D. Petitioners Are Entitled To Raise the Jury Points.

There have been many cases in which insubstantial criticisms of jury selection procedures have been overruled on the ground that the objection was belatedly raised. The two inapposite cases on which the Government principally relies are examples. In *Stubs* v. *United States*, 367 U. S. 263, there was a mere sending out of letters asking for suggestions as to possible jurors. No illegal standards were followed, no volunteers were accepted, and there was no delegation of authority. In *Frazier* v. *United States*, 335 U. S. 497, there was no claim that the jury lists were improperly made up (see 335 U. S., p. 500). The complaint was that in the District of Columbia the jury list was heavily laden with governmental employees; nevertheless, in exercising his peremptory challenges the defendant had failed to excuse Government employees and, on the contrary, had excused several private citizens.

Counsel assert that petitioners are attempting to challenge the jury panels in a "collateral proceeding." This is without merit. Petitioners are proceeding in the case in which they are indicted, and raised the jury points after all judgments had been set aside and when the record was reopened.

V.

SULLIVAN DID NOT HAVE A FAIR TRIAL

(Petitioners' Main Br., pp. 108-109.)

The most crucial documents in the case had not even been offered by the Government against Sullivan, and were not admitted against him; much oral testimony was not admitted against Sullivan; nevertheless instructions were given to the jury that all that evidence should be considered against Sullivan to determine his intent to commit the crime of tax evasion. (The Government Brief says that this objection "is frivolous", (p. 116).

The crucially important disclosure Exhibits are described at Government brief, pp. 52-3, and the Government concedes (p. 53): "None of these documents was admitted against Sullivan (R. 2589, 2611, 2812, 2817)" yet the jury was instructed to consider them against Sullivan (R. 2969). Oral admissions of Cain with respect to the disbursement figures were never admitted against Sullivan (R. 1938). Yet the instructions told the jury Cain's admissions were to be considered in judging Sullivan (R. 2969).

The same error of instructing the jury to consider against Sullivan what was not in evidence against him was repeated by the trial court over and over: (a) the dramatic "three-pile" conversations were not in evidence against him (R. 814-5, 822-3) but the instructions allowed them to be considered to convict him (R. 2967-2968); (b) various conversations with respect to checks had not been admitted against Sullivan (R. 864), still the jury were told to consider them against Sullivan (R. 2953); (c) testimony as to asserted payments the jury was told to consider against Sullivan (R. 2952) although it had not been admitted as to him (R. 814).

The instruction practices of the trial judge as to Sulli-

van were thus seriously erroneous. There is always a grievous risk that a jury will transfer over to a defendant matters not admitted against him (*Blumenthal* v. *U. S.*, 332 U. S. 539, 559). The trial court must be careful that the instructions scrupulously safeguard each defendant for they are his sole bulwark against conviction on evidence not admissible against him (*Kotteakos* v. *U. S.*, 328 U. S. 750, 776; *Bollenbach* v. *U. S.*, 326 U. S. 607, 612-3). Where there was an instruction which let the jury assume they could convict on evidence not admitted against a defendant a new trial must be given (*Anderson* v. *U. S.*, 318 U. S. 350, 356).

The Government does not answer the foregoing point. It merely calls to this Court's attention an instruction which said, in general terms, that statements or acts out of the presence of a defendant are "not binding" upon him (R. 116).[6] One general instruction did not obviate the error committed when the jury was repeatedly told they could consider specific evidence against Sullivan though that evidence was not offered or admitted against Sullivan.

Government Brief (p. 116-7) argues that Sullivan's attorney told the jury that Sullivan directed a disclosure be made and thereby waived any objection to instructions. Counsel by stating a disclosure was made certainly does not waive objections to instructions. The objections were made when required by Criminal Rule 30 (R. 298-306).

The final statement in the Government Brief is that Sullivan joined in requesting an instruction as to disclosure (p. 117); but the instruction to which the Government Brief refers (R. 3210) is vastly different from the one

6. Such an instruction is said to be even more favorable than the defendants deserved, because of the rule in conspiracy cases. This was not tried as a conspiracy case. The trial judge stated to defense counsel early in the trial: "You are thinking of a conspiracy case. This is not a conspiracy case." (R. 865.)

given (R. 2970). Sullivan never asked to be judged (as he was) on evidence not admitted as to him.

The only specific evidence against Sullivan was testimony by Lubben of an alleged admission by Sullivan; but Lubben recanted the very next morning (Br. 108). The *corpus delicti* with respect to Sullivan depending solely on an extra-judicial admission his conviction cannot stand for the admission was not corroborated, in fact it was recanted. (*Smith* v. *U. S.* (1954), 348 U. S. 147, 154-155; *U. S.* v. *Calderon* (1954), 348 U. S. 160, 163-4.)

CONCLUSION.

Petitioners respectfully repeat the prayers and suggestions in the conclusion of their main brief (pp. 110-111).

Respectfully submitted,

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APPENDIX.

At various places in the Government's presentation, counsel argue the merits of the jury case. We do not conceive this Court to be the place to argue the merits. Supposedly, the questions we have raised will be determined irrespective of any notion as to whether petitioners were probably guilty or probably innocent of the crime charged in the indictment.

Nevertheless, since the Government continues to assert that on Lubben's books and records, it had a strong case, and since counsel persist in putting various fact and dollar assertions into their brief, we wish to make at least some showing that the assertions are answerable:

Lubben's "Records."

Set forth at page 19 of the Government's brief is a tabulation of payments which the Government asserted it proved. This tabulation starts out with an item of $10,849. At page 80 of the brief the brief-writers take this $10,849 item as a typical example to show how thoroughly so they claim, the Government's case on the merits was proved. An examination of the record as to this example shows quite the contrary. It shows that from the very beginning Lubben was altering and changing his books and purporting to charge against Shotwell items which in fact he either had pocketed or paid to other persons.

Supposedly the $10,849 was paid on January 19, 1945 to Huebner in New York from the proceeds of a cash check in that amount (R. 812; G. Ex. 27). Supposedly it is corroborated by, and based on, a typewritten memorandum

(G. Ex. 27A) listing shipments from December 6, 1944 to January 12, 1945, showing total asserted "overages" of $17,508, against which $8,000 is shown as having been advanced, leaving a balance of $9,508 to which $1,341 was added in longhand. There is a handwritten note on the memorandum "Paid Jan. 19 45 CD 56 $10849."

However, the ledger or accounts payable sheet (G. Ex. 6A) supposedly reflecting this asserted payment shows the following: Between November 9 and November 30, 1944 there was credited to the account a total of $19,064 of overages. The account was in balance as of September 15, 1944, and it contains no possible combination of debit figures which would show payment of the amount of the November 9-30 invoices *and* overages by the end of the year. A *journal entry* rather than a withdrawal of cash in accordance with Auditor Bereu's asserted system, was made as of December 31, debiting the account $15,364. Moreover, *after* this December 31st journal entry was noted on the account payable ledger (G. Ex. 6A), an entry, post-dated Dec. 6, was made debiting the account $4,200. Supposedly, under the system, this was a payment to Huebner but reference to Cash Disbursements book, p. 29 (G. Ex. 7), shows *that at the time the payment was made* on December 6, it was charged to "General Commercial Association" and someone *later altered the Cash Disbursement book on its face and wrote in "Shotwell."* It is apparent, therefore, that as of December 31 no substantial part of the ascribed overages of $19,064 down to November 30, were paid to Shotwell or to Huebner. It is equally apparent that, from the beginning, money was being diverted through this account to parties not connected with this case.

If the debit entries of G. Ex. 6A down to January 19, the date of the asserted $10,849 payment, are examined it will be seen that there is no debit, or combination of

debits, which would make up the $8,000 advance shown on the alleged typewritten memorandum (G. Ex. 27A). Bookkeeper Feldman, testified that she made the notation on G. Ex. 27A (R. 1439). She first said (R. 1441) that "that entry paid the overages on the specific group of invoices." The "group" shown on the memo, including the one written in at the foot thereof, were those reflected in the credit entries on the account from Dec. 6, 1944 through Jan. 13, 1945. Subsequently, she testified that the check for $10,849 covered only the "overages" she had added to the invoices received as G. Ex. 23A, 24A, 25A and 25B (R. 1452-3). She was obviously incorrect in this because those "overages" total only $6,645. Although Miss Feldman testified at one point that the records indicated the payment was paid "to the Shotwell Manufacturing Company" (R. 1441) she admitted that she had no personal knowledge as to whether they were so paid, nor did she ever see a payment made to Shotwell, or any of its officers or employees (R. 1564, 1585, 1594, 1611, 1693-4).

Government counsel also assert (p. 49) that witnesses other than Lubben said that they had acted as messengers in making payments for him. Let us take Lubben's brother-in-law Moran for example, who testified he paid Huebner $17,190.25 cash in December 1946, as the proceeds of a cash check (G. Ex. 133) in like amount dated December 4, 1946. Moran said he saw Lubben and one Urban of Chicago endorse the check, and it does bear their endorsement, but that he alone went to the Mid City Bank in Chicago, where he was unknown and, after some difficulty (R. 1298), secured the cash on the check without being required to endorse it (R. 1303) or having an officer of the bank approve the transaction (R. 1306). Moran said he accomplished this by giving the paying teller a five pound box of candy (R. 1311).

However, the Mid City Bank officer testified that in fact

Urban, who was known to him, presented the check to him; that he okayed it for payment order carried it to the cage where teller No. 2 made the payment; *that Lubben, who endorsed the check, got the money* (R. 1992-2005).

Thus at the beginning and at the end of the asserted transactions one finds strong evidence that Lubben was diverting money either to his own pocket or to persons not connected with this case.

The Government's supposedly fearsome paper case will not withstand examination.

Office-Supreme Court, U.S.
FILED
FEB 23 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

No. 16

THE SHOTWELL MANUFACTURING COMPANY (RENAMED HOMAN MFG. CO., INC.), A CORPORATION, BYRON A. CAIN AND HAROLD E. SULLIVAN,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING.

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Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING.

Petitioners respectfully petition for a rehearing in this unusual case, and, if necessary, re-argument. This petition is lengthy because the facts are complex.

The legal questions as to (1) admissibility in a federal criminal trial of an exaggerated confession obtained in a context of believed immunity from prosecution, and (2) the degree of willful "exaggeration" permissible in Government evidence in federal prosecutions, are not complex. They should not have led to the bitter cleavage shown by the present opinions which we feel stems from a miserable and mortifying failure on our part to make the facts of the record clear to the present majority of the Court.

Inherently and explicitly the present majority opinion is bottomed upon *an original finding of fact by this Court* that Huebner, at the reopened hearing, corroborated Lubben's trial testimony to the jury of a gross of $454,000 save for "$32,000 to $57,000" (Op. p. 14). It is that assumption of fact, which goes far beyond anything found below, which leads to the crushing conclusion of gross fraud by petitioners on which Parts I and II of the opinion are founded.

We attach hereto a reproduction of a chart *prepared by the Government* at the conclusion of the remanded hearing which demonstrates that the disparity between Lubben before the jury and Huebner on the supplemental hearing, is not the mere $32,000 to $57,000 erroneously assumed by this Court, *but actually is over $250,000.*

It well may be that we should have stressed the facts more, and the law less, in our briefs and should have set forth there the tabulation which is annexed hereto. But whether the blame should attach to us for not driving the facts home here, to the District Court for making vague findings[1] which have confused this Court, or to counsel for the Government who made insupportable assertions of fact, the result is that citizens now stand to go to the penitentiary under an opinion that is bottomed upon a gross and demonstrable misunderstanding of the record.

1. The District Court found that Huebner's testimony was "reasonably consistent and compatible" with the trial testimony (App. 1758); "Huebner may be mistaken as to the exact amounts"; "that Lubben may have exaggerated the amounts * * * is entirely probable"; "substantial sums [were] paid * * * totalling between $300,000 and $400,000". (App. 1758); "* * * good faith does not turn on the exact amount of Lubben money Huebner, Sullivan or Cain may have received * * *" (App. 1759); "It is not particularly important to determine * * * the exact period of the existence of the corn box or the exact amount of Lubben's money that was used to purchase raw corn." (App. 1763.) There is no place in the District Court's findings (Order on Rehearing re Suppression; App. 1754, et seq., where this Court can get its hands on any definite figures.

This, we are confident, no member of the Court wants whatever his views as to the law may be.

Therefore, we respectfully request that the case be re evaluated in the light of the facts herein contained which, we submit, make it impossible to adhere to an opinion premised upon belief that there was a mere "$32,000 to $57,000" variation between Lubben and Huebner. For, as the Solicitor General said in *Mesarosh v. U. S.*, 352 U. S. 1, 19, n. 7, "* * * it is never too late to try to do justice." If the opinion is recast to eliminate the factual misconception on which it is based the case is put in a far different light. We believe the Court will then be able to award petitioners a new jury trial. Nor should it be embarrassing to any member of the Court to change his position on ultimate disposition of the case where his original position was based upon a serious misconception of fact.

TREMENDOUS DISPARITY BETWEEN LUBBEN TESTIMONY TO THE JURY AND HUEBNER TESTIMONY.

At the conclusion of the reopened hearing Government counsel furnished a tabulation purporting to compare Lubben's (and related) testimony given to the jury, with that of Huebner at the new hearing. Photostatic reproduction of it is annexed as Appendix A hereto. (The handwritten material or notes appearing on the reproduction were made by us in originally working with the document and we have been unable to erase them for purposes of preparing the annexed copies.) In examining this tabulation it is important to note the column headed "Paid To" denoting the supposed receiver of the payments *as testified to by Lubben*. In nearly every instance it will be seen Lubben claimed he paid the money *to Huebner*. This table demonstrates beyond doubt that *Lubben testified he gave to*

Huebner the following payments which Huebner either denies, or fails to corroborate:

Approximate Time	Amounts of asserted payments to Huebner He Did Not Receive
Feb. 7, 1945	$ 6,183.00
After check dated March 6, 1945 was cashed	18,000.00
June 28, 1945	5,524.00
Between Sept. 28 and Nov. 27, 1945	47,000.00
Close to Xmas, 1945	10,000.00
Somewhere in the neighborhood of early March 1946	16,825.00
Unbilled shipments Bills of Lading Govt. Exhs. 151 and 152 dated 5-22 and 6-8, 1946	27,322.67
Unbilled shipment of Aug. 9th Bill of Lading Govt. Exh. 154	23,178.12
Settlement for shipments July 22 to Aug. 14, 1946	29,519.63
Oct. 14 (1) On or about day check was cashed, and (2) Around Oct. 12	22,235.00
Nov. 1946	2,004.00
On or about date check was cashed (Nov. 9, 1946)	319.50
Total Lubben said he gave to *Huebner* to which Huebner does not agree	$208,101.92

In addition Lubben was contradicted as to two items totalling $49,076.51, which Lubben said he gave *to Graflund*, which payments are denied by both Huebner (App. 856) and Graflund (App. 1145). Thus the conflict to be resolved

between *Government* witnesses, *vis a vis* Lubben, encompasses items totalling $257,178.43.

The reality of this contradiction and the complete irreconcilability of the versions of Huebner and Lubben is emphasized by the fact that Huebner did not claim that Lubben may have made substantial payments to him which he did not recall. For example, Huebner testified that in January, 1945 Lubben delivered between $10,000 and $11,000 to him at the Pennsylvania Hotel in New York (App. 586). He was then asked "Q. What is the amount of *the next over-the-counter currency payment that you actually received from Mr. Lubben in 1945?*", and answered that it was $15,000 which he received in the latter part of March, 1945 (App. 590-591). If the Court will examine the table set forth above, or the exhibit at the back of this petition, it will see that thereby Huebner denied and wholly excluded payments Lubben claimed he had made *to Huebner* in the sum of $6,183 about February 7, 1945 and $18,000 shortly after March 6, 1945.

Huebner purported to confirm (by badly impeached testimony) Lubben's claim that he had paid Huebner an aggregate of approximately $25,000 around the first and the latter part of May, 1945. He then was asked:

> "Q. *When was the next time* in 1945 that you received a currency payment from Mr. Lubben?"

He answered:

> "A. Somewhere in December of 1945."

at which time he said he got between $18,000 and $20,000 (App. 603, 605). Lubben, however, had testified that he paid Huebner $66,000 between September 28 and November 27, 1945. This particular discrepancy therefore is $47,000, which is the figure shown on the table set forth above. (See also top horizontal section page 2 of annexed exhibit.)

Additionally, Heitman (Lubben's factory superintendent) testified to the jury that he paid $10,000 for Lubben to Huebner near Christmas 1945. Huebner did not confirm this at all.

Thus one may go through the various items and necessarily must arrive at the discrepancy we have set forth of $208,000 to which must be added the $49,000 which Lubben claimed he paid to Graflund and which both Graflund and Huebner deny.

There are two reasons why this wide conflict between Lubben and Huebner, or between trial and new hearing, cannot be washed aside by any claim that Huebner might have "forgotten" some payments. *First*, Huebner did not so claim. Repeatedly he stated positively, after testifying to some specific payment, that the "next" payment he got was in such an amount on such an approximate date, thereby denying intervening payments Lubben claimed had been made to him. *Second*, the Lubben claims of payments were so large that it is impossible, if they in fact had been made, that Huebner could have forgotten them. A man simply can't forget $208,000.

The severity of this contradiction is even more striking when it is realized that in preparing Huebner to testify Government agents and attorneys had before them a tabulation of Lubben's 1953 testimony essentially like that in the annexed Appendix, or as set forth at page 19 of Brief for the United States in this case (App. 765). They took Huebner through it item by item. Sometimes Huebner said he "didn't remember" receiving the money that Lubben claims had been paid, at other points he said he didn't think he got it at all. Examples appear at App. 760, 763-4, 773, 808, 839-40. Government counsel squeezed every bit of corroboration out of Huebner they possibly could. Yet, taking Huebner's testimony at full value the tremendous disparity we have indicated above exists.

And the Huebner evidence itself must be discounted for it plainly "exaggerated" the amounts even he testified to—it is, *as the District Court found*, shot through with "glaring inconsistencies and contradiction" (App. 1768-9). Thus Huebner originally said that overages started at the rate of 5¢ a pound, but later switched and said it was 10¢ (App. 750, 770); he first said he never got any money personally until September of 1945 and he didn't know how much (App. 771-2), but then turned around and said he got $5,000 in March 1945 (App. 591) and $10,000 out of an asserted $30,000 payment in early May 1945, out of which he originally said he got nothing (App. 775-779). It is impossible either to reconcile Huebner's testimony internally or to bring it within $200,000 of Lubben's.

The gross factual misapprehension this Court has labored under can be demonstrated in another way:

The present opinion, in making its finding that the variance is only $32,000 to $57,000 does so *by adding to the sum it believes Huebner testified to receiving*, "$125,000 to $150,000" of "corn box" money, as though such funds were received for Shofwell by *someone other than Huebner*. However, Appendix A demonstrates that *every payment was to Huebner* except a minor one to Mrs. Krasne and two to Graflund which Graflund (App. 1145) and Huebner (App. 856), testifying as Government witnesses, denied Lubben made. There simply is no "some $125,000 to $150,000 that must be added to this $272,000 total" (Op. pp. 13-14). **If this $125,000 to $150,000 was not paid to Huebner, it was not paid at all.** This is indisputably clear from the column "PAID TO" in the Government schedule reproduced as Appendix A.

This error, of adding $125,000—$150,000 to Huebner's testimony, is indisputably clear if the problem be viewed from another angle: the testimony always has shown that some such approximate sum went through the corn box. The

money *was* there; it *was* expended[2] and the source of the money (save for a temporary loan of $14,000 from the Officers' account) *was* Lubben.

There is not a scrap of evidence of production of money for the corn box in any amount (save for the loan of $14,000) from any source *other than Lubben*. It is, therefore, logically and testimonially impossible to assert that what was spent for corn must be *added to* whatever Huebner claims he got from Lubben. Fifteen years of intense investigation and eleven years of litigation have failed to reveal any other possible source of the money that went through the corn box other than Lubben.

Whatever went through the corn box *must be included within* whatever gross sum one may believe Lubben paid, and is to be *deducted from* that sum rather than *added to it* in seeking to determine whether Cain and Sullivan possibly could have received the sums attributed to them.

The *addition*, by the opinion, of this $125,000 to $150,000 is wholly unjustified and necessarily means that the present opinion's conclusion as to the amount of the variance *understates the variance by that amount—$125,000 to $150,000.* The correction of this single factual error alone, even if no other figures in the present opinion be changed, *necessarily results in a mean, or average variance figure of approximately $182,000.*

The final effect of the variance and the tremendous injustice done petitioners may be demonstrated in still another way:

Huebner testified he received $272,000 from Lubben in 3 years. Of this, he says $28,000 was in 1944, (not involved in the indictment), and was not "pocketed" but was expended for some company purpose he does not recall. (App. 583-

2. Note for example that Huebner testified that one middleman alone got around $75,000 on corn deals. (App. 785.)

5.) Huebner says he personally got $45,000, most, but not all, of it with knowledge of Cain and Sullivan. (Cain and Sullivan deny such knowledge.) Huebner says $30,500 of what he claims he turned over to Cain (App. 636-638) was spent on an apartment for one Gael Sullivan (no relation) and, whether deductible or not, this sum certainly was not "pocketed" by Cain and Sullivan. Certainly at least $125,000-$150,000 was spent for corn and, as we have demonstrated, *had* to come from these funds. And Huebner certainly "exaggerated" to some degree in his conflicting testimony—let us say 10% (and we are charitable). Moreover, when the corn box was closed $5,900 remaining in it was carried into the company accounts and accounted for as income. (R. 782.)

The unavoidable mathematical result is:

Receipts		
Gross paid by Lubben (according to Huebner)	$272,000	
Deduct 10% "exaggeration"	27,200	
		$244,800
Disbursements		
Spent in 1944 for "company purpose"	$ 28,000	
Huebner	45,000	
Corn	137,500	
Apartment	30,500	
Balance carried into corporate books	5,900	$246,900

The foregoing is *taking Huebner at face value* except for a 10% reduction for his own exaggerations and "glaring inconsistencies". This tabulation demonstrates that if Huebner be substantially believed, but if the unsound, wholly unproved assumption that the money for corn

came from some place other than Lubben's payments, be discarded, there was a *deficit* in the operation; certainly there was no $400,000 for Cain and Sullivan to have put the "greater part of" in their pockets.

The foregoing figures, of course, are not precise or exact (with the exception of the $5,900 which actually was carried into the company's accounts), **but they should forcefully impress any court that Messrs. Cain and Sullivan were not talking fiction when they denied they ever personally profited from these transactions.** The foregoing accounting can be changed to some degree by taking either the low figure of $125,000 for corn, rather than the median of $137,500, or, by taking a figure of $150,000 to $160,000. (The Government virtually agreed in the Court of Appeals on the first appeal that the latter figure was not an unreasonable estimate.) And it may be said that no deduction should be made for Huebner's exaggeration. But however the account be adjusted, it is clear that Cain and Sullivan have a strong case; that it is impossible they could have put "the greater part" of $400,000 in their pockets; that something in line with the foregoing tabulation accords with the facts; that Cain and Sullivan should have, in fairness and for all of the reasons pointed out in the dissent, the right to have a jury pass upon these facts.

And once more, it was the refusal of the District Court to make detailed, down-to-earth fiscal findings, but instead to resort to sweeping, loose generalities and condemnations, that led this Court to act upon non-existent factual premises and from them to conclude that Cain and Sullivan are fraudulent villains, when they are nothing of the kind. We suspect our initial criticisms of Judge Nordbye did not sit well with the present majority of the Court. Nevertheless, the liberty of citizens of heretofore unblemished reputation is now at desperate stake. The sad fact remains that the unavoidable detailed facts and compar-

isons we make here were always apparent and cannot be denied. The District Court did this Court no favor when it buried these simple fiscal, or accounting facts in an avalanche of general condemnation and said it was not necessary to determine when the corn box opened, what passed through it, etc. (See App. 1763 and opinion note 11.)

The significance of the tremendous variance between what the jury heard and what the Government, by Huebner, now says is the truth, is that the disparity is very real and not merely "apparent." It is unthinkable that American justice could tolerate sending citizens to the penitentiary where the Government first produced testimony before a jury, which the District Court found the jury believed, that petitioner Shotwell received $454,000 gross income, but in a separate hearing proved by other witnesses, which it also asks the Courts to believe, that the amount of gross income was actually some $182,000 less than was told to the jury. Surely a fresh jury trial on untainted evidence is required.

UNFORTUNATE RELIANCE ON GOVERNMENT BRIEF

In arriving at the erroneous conclusion that the disparity between Lubben and Huebner "is more apparent than real," the opinion states (p. 13) that on the new hearing Huebner "was never asked to say whether [the payments he said he got] were the only Lubben payments he himself received." The opinion also states (p. 13) that Huebner was "not the only person in the Shotwell organization who had received Lubben money." The inference is that some unspecified sum paid to Huebner beyond what he "admitted" receiving, and a further sum, or sums, paid to some other unspecified person or persons, should be added to what Huebner said he got.

In advancing those contentions *the opinion proceeded*

without benefit of findings to like effect by the District Court" and relied upon unsupportable arguments in the Government's brief (p. 29), plus such examination of the record as the Court was able to make. The Government brief led the Court into a gross misconception of the record, as we now demonstrate:

1st. Huebner was not asked whether the payments he "admitted" receiving from Lubben were the only ones he received, because *it was not necessary so to do.* The Huebner testimony, as he gave it, *precluded any other payments.* The prosecutor had promised the District Court, Huebner would tell "everything that happened in his transactions with Lubben" (App. 572). It was not claimed, nor did Huebner testify, that there were *other* payments he had not told about.

2nd. There is not a scrap of evidence that Lubben actually paid money to any persons *other than Huebner and Grafland!* (See Government's own tabulation appended hereto.) Roeser and Mrs. Morrill, Shotwell employees, who at times had access to the "corn box" and *physically handled* some of the money, testified as *Government* witnesses before the jury in 1953. *Roeser never testified to receiving money independently of Huebner.* As a custodian of the corn box he described procedure under which Lubben would bring money to the plant, see Huebner, and then *Huebner and Lubben* would turn the money over to Roeser (R. 1705-1707). And Roeser's testimony is effective contradiction of Huebner's new assertion that these payments went into the

3. It is true that the District Court found that "Huebner may be mistaken as to the exact amounts of money received and when the payments were received," but that observation, in the context of the hearings, trial briefs and opinion was not a finding that Huebner might have received *more* than he testified. Rather, it was a guarded recognition of petitioners' strenuous arguments that he got *less*; it was partial recognition of "the glaring contradictions and inconsistencies" in Huebner's various versions, all tending to show that the amounts he actually received from Lubben were considerably less than the sums he finally claimed.

pockets of Cain or Sullivan. Mrs. Morrill did not testify to *receiving* any payments in any fashion. Her connection with the money was, "Only by assisting in counting, sometimes giving it to somebody in the office who might ask me for it." (R. 780). Huebner's testimony on the remanded hearing that he "directed" Roeser, Mrs. Morrill and Graflund to "receive" payments from Lubben is quite consistent with Roeser's version that Huebner would bring *Lubben and the money* to Roeser and request him to take custody of it. It does not establish the existence of independent payments to anyone. Roeser and Mrs. Morrill were examined again by the 1956 grand jury and if the fact was that they had been independent recipients of any payments, they would have been produced before Judge Nordbye in 1958. The "other payments, to other people," theory is myth which has no place in a criminal prosecution where a citizen's liberty should be endangered only by substantial evidence.

We humbly suggest that the majority on the present opinion has permitted itself, contrary to prior teachings of this Court, to act as a primary fact finder on an excessively complicated record in which "bare figures have a way of acquiring an existence of their own, independent of the evidence which gave rise to them" (*Holland* v. *U. S.*, 348 U. S. 121, 128). This Court is "* * * ill-equipped for such a task." (Harlan J., in *Mesarosh* v. *United States*, 352 U. S. 1, 23). In making the findings of fact we have criticized the majority relied on assertions in the Government brief as to the proofs. Those assertions were invalid. It may be that the undersigned should be criticized for not exposing these particular errors in the Government's presentation in our original briefs. If so, the criticism should be visited upon us, and not upon our clients by imprisonment upon a non-existent factual basis.

And certainly the Government is in neither moral nor legal position to complain, if, on rehearing, the Court corrects mistakes the Government itself led it into.

THE EFFECT OF THE MISCONCEPTIONS UPON THE OPINION

The opening portion of the opinion (p. 3) accepts the District Court's finding that fraud had permeated petitioners' "disclosure showing" both at the suppression hearing "and the trial" (*sic*). It says that such ultimate finding,

> " * * rested primarily on subsidiary findings that although Shotwell's black-market *receipts* had not in themselves been misrepresented, the claim that they had been almost entirely offset by *payments* for the purported purchase of black-market supplies was false — the truth being (contrary to what petitioners Cain and Sullivan had testified in the earlier proceedings) that most of Shotwell's black-market receipts 'totaling between three and four hundred thousand dollars,' had found their way into the pockets of Cain, Sullivan and Huebner. * * * "

The foregoing underlies both Parts I and II of the opinion. There are two steps to the chain of reasoning. *First*, a belief that a very large sum of money was paid by Lubben which, while not precisely what Lubben had claimed, was not too far from it. This is based upon the assumption that there was no great disparity between the Lubben and Huebner testimony. We have shown the error of that above. *Second*, the "greater part" of this undetermined, but very large, sum was appropriated by Cain, Huebner and Sullivan for their personal use. It is this believed fact that Cain and Sullivan "pocketed" large sums that impelled the conclusion petitioners were guilty of fraud. We observe in addition to the factual matters above set forth:

1. No issue of what assertedly went into petitioners' pockets was mentioned when the case was here before (355 U. S. 233).

2. Huebner's affidavit lodged with this Court to procure the remand raised no assertion that money went into petitioners' pockets.

3. The opinion in 355 U.S. was plain that no question going to the merits of any tax case, corporate or personal, was to be decided upon remand, saying at p. 244:

> "We should not lose sight of the fact that the Government's new showing does not relate to an issue submitted to the jury in the proceedings below, but rather to a preliminary question as to the admissibility of evidence. Hence to grant the Government's motion is not to permit it to 'bolster' the evidence upon which the verdict of guilty was returned by the jury in this case."

It is only because the Opinion finds that much money went into the pockets of Cain, Sullivan and Huebner that it makes the following findings in which inhere evaluation of wilful intent classically the exclusive province of a jury:

> "* * * the disclosure 'was fraudulently contrived'" (p. 4).
>
> "* * * their disclosure was fraudulent" (p. 5).
>
> "* * * a fraudulent disclosure had been depended upon" (p. 7).
>
> "* * * the facts disclosed were deliberately misrepresented." (p. 8).
>
> "* * * no full and honest disclosure was ever made" (p. 9).
>
> "* * * petitioners attempted to hoodwink the government" (p. 10).

Findings of *mala fides* and criminal intent such as the above are, in criminal matters, jury questions.[4]

Petitioners have always insisted—and never waived—

4. "Where intent of the accused is an ingredient of the crime charged, its existence is a question of fact which must be submitted to the jury." *Morissette* v. *U. S.* (1951), 342 U. S. 246, 274.

that any question of money going into their pockets was not raised by the indictment and in any event would be a jury question, if, and when raised. It has been raised in the companion conspiracy indictment discussed at p. 20 *infra*, *which petitioners still face*. But on the trial of *this* case the law was stated thusly to the jury:

> "I charge you that to the extent that you find from the evidence that any cash payments for overages were received by individual defendants for their own benefit, then to such extent such payments would constitute income to such individual defendants and did not constitute taxable income to The Shotwell Manufacturing Company." (R. 2968.)

When on remand it became plain the Government wanted to offer this Huebner claim of money going directly to Cain and Sullivan, petitioners continually insisted this was a jury question; and was one which would tip the case upside down (See next heading). At App. 391 the District Judge said:

> "* * * if the evidence substantiates a finding that instead of paying out $345,000.00 for corn, a very substantial part of that money was diverted to others, then it may bear upon the question of the good faith of the so-called voluntary disclosure."

To this counsel for petitioners objected:

> "If you are going to hear and decide on this hearing how much came in and how much went out, then you are going to try the issue in chief of the whole case. That, of course, we think is not within the scope, and in deference to your Honor, we don't think you really intend to do that.
>
> "By the Court: No, I can't say that I have determined the limits of the scope of the inquiry."

To an expression of the Court that he would hear the asserted proof of money that went "into the pockets of any of these defendants" defense counsel objected (App. 405-

411) that a jury question was involved. *Semble*, App. 571, 1028, 1781.

Petitioners, upon the present opinion, are to go to prison because a court, not a jury, believes that upon the merits of where the money went, *as buttressed by the new evidence*, the defense was fraudulent. This judgment is reached on evidence given on remand by Huebner and never heard by a jury. This new evidence, coming solely from Huebner, was factually controverted.[5] Before it can properly be weighed petitioners are entitled to have a jury pass on it.

5 For example, Huebner said he gave cash twice to Sullivan. The first time, he said, was in 1945 (App. 603) in the cold of winter (App. 847); but before the Grand Jury he testified it was in 1946, in the heat of summer (App. 919-920); he said he got the money from either Lubben or Moran (App. 603) but later didn't remember getting any money from either, at the time in question (App. 842-3). He said Sullivan put the money in the members' vault at the C. A. A. (App. 846-7) but the vault records showed Sullivan didn't use the vault except once, four years later (App. 1604-5). The only other payment to Sullivan, Huebner said, was in February 1946 when Sullivan was in St. Joseph's Hospital with a penicillin rash (App. 848-9); the hospital records showed Sullivan's stay at St. Joseph's for penicillin rash was three years later, in 1949 (App. 848). Huebner said he had gotten the money from Lubben in February 1946 (App. 618) but as the Government's Brief here shows in its table at p. 39, Lubben says he gave nothing to Huebner from 11/27/45 to 3/25/46. On cross-examination Huebner admitted he got no cash from Lubben *at all* in February 1946 to give Sullivan or anyone else (App. 850). There were similar contradictions as to claimed payments to Cain. As examples, Huebner testified he got $30,000 at the Sherman Hotel from Lubben, gave it to Cain at the Belden Stafford, and Cain gave him $10,000 (App. 598-600); on cross-examination it was shown he had previously testified the envelope was sealed, he did not know how much money was involved and he got none of it (App. 777-8) and he never got more than $5,000 at one time (App. 951). Other examples of Huebner's testimony being in "hopeless internal conflict" (*Blackburn* v. *Alabama*, 361 U. S. 199, 209) could have been argued to this Court, but those fact questions we believed proper for a jury or a new trial, rather than for this court of review.

THIS COURT'S FINDING IS INCONSISTENT WITH THE VERDICT OF THE JURY.

In the unusual procedures of this case an amazing thing has occurred:

1. The trial to the jury was conducted on the theory that everything Lubben paid, went to, and was taxable to, the Shotwell corporation. The District Court instructed the jury that to the extent they believed that any of the cash payments were received by individual defendants for their own benefit then they would constitute income to them and *not income to the corporation.* To bring in a verdict the jury *had* to believe quite contrary to the present finding, that "the greater part" of the Lubben payments *went to Shotwell;* the verdict can be sustained only upon the basis that there was fair, "unexaggerated" proof of *such corporate income* beyond a reasonable doubt.

2. But six judges of this Court now find that petitioner should go to prison on precisely the contrary premise, namely, that the greater part of the payments *went to the individuals* for their own personal use and that what little Shotwell did get, it expended for corn.

This Court's finding of fact and the jury's are, therefore, mutually inconsistent.

The Government cannot have it both ways. *If* it is the Government's contention that the greater part of Lubben's payments went to the individuals then the verdict which the Government obtained by convincing the jury that the greater part of the payments went to Shotwell was improperly obtained and must be set aside. On the other hand, if it is the Government's contention that the jury was correct that the greater part of the Lubben payments went to Shotwell, then this Court's finding that petitioners did not make a fair disclosure is patently invalid.

The fact of the matter is that the Government procured an indictment and tried this case on one theory—corporate tax evasion—and then in 1956 or 1957 changed its theory and decided what petitioners really were guilty of was personal tax evasion. That new theory, which in substance is adopted by the instant opinion, is embraced in the conspiracy indictment brought against petitioners in 1957, to which we will refer, and which will have to be fought out before a jury in that case.

We contend that *neither* Government theory is sound but, be that as it may, certainly the Government cannot advance a theory of corporate tax evasion to a jury in 1953 and win on it, and then rightfully persuade the Supreme Court in 1963 to uphold the jury's verdict of corporate evasion because what was really involved was individual tax evasion. Nor can the verdict be upheld on any theory that the jury thought these payments were both corporate *and* individual income on any notion that the payments were "constructive dividends"; not a trace of such theory was ever put before the jury in this case.

We respectfully suggest that if justice is to be done the Department of Justice should be afforded an opportunity to answer this Petition and to inform the Court if we have stated any inaccuracy in what has just been pointed out.

It would be an anomalous thing to have a jury in the pending conspiracy case hear, within the next few months, whatever evidence the Government has, including Huebner's "new" evidence, and arrive at a conclusion, as we assert the fact to be, *that the only individual who got any personal money out of these transactions was Huebner and that Shotwell, Cain and Sullivan were innocent*, while this Court permits a conviction to stand on a precisely opposite theory.

We now direct attention to the pending conspiracy case:

THE ASSERTED FACTS UPON WHICH THE PRESENT OPINION IS BASED WILL BE TRIED OUT IN THE COMPANION CONSPIRACY CASE NOW AWAITING TRIAL AND WILL BE EVALUATED BY A JURY IN THAT CASE.

During the "re-investigation" of *this* case a grand jury was empaneled. On February 27, 1957, it brought in an indictment against petitioners Sullivan and Cain, accountant Busby, and Revenue personnel Sauber and Johnson, alleging they had conspired to conceal the "*receipt, utilization and disposition of taxable income*," *emanating from Lubben, by Sullivan, Cain, Huebner and Shotwell, during 1944, 1945 and 1946.* This is the precise issue to which the present opinion largely is directed.[6] To demonstrate the identity of theory of the instant opinion and of that indictment we set forth relevant excerpts from the latter as Appendix B hereto.

There is no way, so far as we see, by which reassessment of the essential evidence of this case can be avoided by the Government, petitioners or the other defendants in the companion case. Any of the parties to that case can insist on a trial. If this reassessment must take place, is it not consistent with elementary principles of justice that it be in the case that has proved to be the root of the trouble? *If* the Government's case is sound it will lose nothing. *If* its case is not sound it deserves to lose.

If this petition should be denied and the present convictions be allowed to stand, trial of the companion case will afford petitioners a chance of retrieving, to some degree, their names and reputations. However, they should not be required to prove their innocence through a secondary trial. American justice should afford them that opportunity in the proceeding in which the Lubben perjury was first proffered against them.

6. This indictment was referred to during the first appeal here. Full copy of it appears as an appendix to Brief for Respondents, No. 1, O. T. 1957.

I.

Confessional Material.

It is difficult to believe that American justice can rest comfortably with the doctrine that an admission or confession which admits an exaggerated degree of crime (amount of unreported *gross* income), *and which never would have come into existence but for an official promise of immunity from prosecution*, can be admitted against the confessors in a subsequent criminal trial.

Yet that is the holding of Part I of the present opinion. It is difficult to read the opinion without concluding that the majority was influenced by its belief, unwarranted by the evidence, that petitioners had set out fraudulently to conceal the receipt of large amounts of individual income. We have tried to show in what has gone before that the discrepancy between Huebner's new evidence and Lubben's old evidence is many times greater than the Court believed, and that what Huebner falsely claimed Cain and Sullivan put in their pockets *actually had to go into the Shotwell corn box to finance the very large purchase of raw corn*. But we now address ourselves to the legal questions.

In deciding whether confessional material may be used two separate questions must be answered. So far the Court has answered but one. Those two questions are:

1. Is the confessional material barred from use because secured in violation of the Fifth Amendment's protection against incrimination?

2. Is the confessional material barred by any common law rule or by the conception of "due process" which excludes confessional material induced by promise of immunity?

Wigmore at p. 249 of his 3rd Edition describes precisely the present posture of Shotwell:

> "Thus, where a compulsory disclosure is offered, it may be admissible so far as the privilege against self-incrimination is concerned, and yet the question of its propriety as a confession may be raised; while it may be inadmissible on both grounds."

The Court has presently decided that here the disclosure documents are "admissible so far as the privilege against self-incrimination is concerned."

While acknowledging the attention given to the "privilege against self-incrimination" question in the opinion, we urge that *Wigmore* points out "that the theory of confessions has no connection with the theory of this privilege. . . ."

Time after time this Court has excluded confessions on the ground of the privilege against self-incrimination even though recognizing that the confession was probably *true*. *Rogers* v. *Richmond*, 365 U. S. 534 and *Lisbena* v. *California*, 314 U. S. 219, 236 are instances in point. In so doing the Court was striking at impermissible methods of obtaining evidence. *But never before has a confession been held admissible because it was partially false.* Confessions induced in whole or in part by promises of immunity should be, and classically have been, excluded, not merely because the law frowned upon the method used, but because such confessions are probably untrue.

In our brief (pp. 71 and 72) we relied upon *Wigmore* but fear we did not quote sufficiently from his work. *Wigmore* says (p. 250) that "The confession-rule aims to exclude self-incriminating statements which are false, while the privilege-rule gives the option of excluding those which are

true." What happened in the case at bar is undeniably clear. *Petitioners, to obtain immunity, gave a self-incriminating statement which was false in that it confessed the receipt of a substantial amount of money that Labben in fact did not pay.*

There are many parts of *Wigmore's* treatise we think are of direct bearing on the issues. We select the following from the third edition which we believe particularly pertinent as the case now stands:

Wigmore, on Evidence, 3d Edition, Pg. 331-333:

"6. Existence of the Inducement (Subsequent Ending, etc.)

"§853. General Principle. The exclusion of a confession necessarily assume (1) that the inducement, if it operated at all, was likely to produce a false confession, and (2) that it did in fact operate upon the mind of the person. The question arising under the first of these elements—the *nature* of the inducement—having been examined, it remains to notice those arising under the second,—the *existence* and *operation* of the inducement. Where an inducement sufficient to exclude any confession obtained by it has been offered, the question often arises whether a confession subsequent in time to the inducement was in fact influenced by it.

"It must be remembered that no attempt is ever made to investigate the *actual* motives of the person confessing, or the part played by the inducement among other motives. The whole theory of inducements rests on the *probable* effect, not the actual effect, upon the person. If while that inducement is held out a confession is made, no inquiry is ever made into the exact share of influence which the inducement had in evoking confession."

Pg. 249-250:

"Finally, a confession is not rejected because of any connnection with the *privilege against self-crimination.*

The circumstances that this privilege protects against a disclosure which is compulsory, and that one of the tests for a confession is whether it is voluntary or not, have naturally led to the occasional use of both arguments at once by counsel in opposing the use of such a confession; but the Courts have properly kept the two principles distinctly apart. Thus, where a compulsory disclosure is offered, it may be admissible so far as the privilege against self-incrimination is concerned, and yet the question of its propriety as a confession may be raised; while it may be inadmissible on both grounds. Moreover, where the privilege has been violated, there is no need of resorting to confessional principles to exclude it, since the theory of the privilege itself suffices to prevent the use of evidence obtained in consequence of such a violation (*post*, §2270). Finally, that the theory of confessions has no connection with the theory of this privilege is shown by the prevailing doctrine that testimony obtained by the violation of the privilege cannot be objected to as such unless it is being used against the person thus disclosing (*post*, §2270). The sum and substance of the difference is that the confession-rule aims to exclude self-criminating statements which are *false*, while the privilege-rule gives the option of excluding those which are *true*. The two are complementary to each other, in that respect, and therefore cannot be coincident."

Pg. 251-252:

"The term 'a promise or a threat', as well as the term 'voluntary', are also misleading in another way; for they obscure the fact that (even when threats are used) the situation is always one of choice between two alternatives,—either one disagreeable, to be sure, but still subject to a choice. As between the rack and a false confession, the latter would usually be considered the less disagreeable; but it is none the less voluntarily chosen. The term 'voluntary', then, as describing the absence of the vicious element which excludes a confession, is, in ultimate exactness, unsound. All conscious verbal utterances are and must be voluntary;

and that which may impel us to distrust one is not the circumstance that it is involuntary, but the circumstance that the choice of false confession is a natural one under the conditions. The choice of false confession is voluntary, but the false confession is associated with a prospect (namely, of escape from present harm) so tempting that it is not in human nature to resist it.

"In general, then, the position of the confessing person which causes our distrust is that of being compelled to *choose between two alternatives*, one of which involves a confession of guilt irrespective of its truth or falsity."

a. The Falsity of the Confession:

The majority criticizes the "confession" here as being false (but not entirely so), with respect to its statements of outgo. But it is not denied, that it was also false (but not entirely so), in its admissions with respect to the receipt of an exaggerated amount of gross income.

It is the very falsity and *probable* lack of probity of material induced by promises of immunity that bans its use under the confession rule. Here we have a case not of *probable* but *actual* falsity. Government witness Graflund testified that the compilors of the confessional material put everything in at the top price whether right or wrong for the simple purpose of trying to have the summaries of income "tie into" and "jibe" with Lubben's "exaggerated" papers (App. 1245-7; see also App. 797-800, 967-8, 1063).

This confession indisputably was "exaggerated" in its statements both of income and outgo. This is the exact phenomenon which the common law says is likely to occur when promises of immunity are made. It is the very reason that confessional material obtained in this way is

inadmissible. (See *Wigmore* 3rd Ed. 2d 822.) Yet, such material, which would never have come into existence but for the lure of immunity; and which admits receipt of substantial amounts of gross income that none of petitioners obtained, has been used as a "main arch" to encompass their convictions.

b. The Weighing of the Inducement:

The opinion seeks to weigh the *inducement* of the voluntary disclosure policy upon petitioners, and concludes (1) any governmental inducement of immunity was conditionally offered, for only honest disclosures both of income and outgo were invited, and (2) even such inducement was *constructively* withdrawn *by the Government* once there was an attempt to deceive in part.

However, once this Court accepts that the petitioners were at all induced by the government's public offer of a way to avoid prosecution, the common law confession-rule does not permit the Court to weigh the *actual* effect of the initial inducement.

Perhaps a court may attempt to analyze the motives of confessors in endeavoring to decide whether they were *forced to incriminate themselves*, but it should not do so in deciding whether the confessional rule applied. *Wigmore* says in Sec. 853:

> "It must be remembered that no attempt is ever made to investigate the *actual* motives of the person confessing, or the part played by the inducement among other motives. The whole theory of inducements rests on the *probable* effect, not the actual effect, upon the person. If while that inducement is held out a confession is made, no inquiry is ever made into the exact share of influence which the inducement had in evoking confession."

c. Compliance With Disclosure Policy and Inducement Are Separate Questions:

Accepting the opinion's factual predicates, it says that because petitioners did not fully reveal Shofwell's (and the individuals') *believed civil liabilities*, they did not comply with the Treasury's disclosure policy so as to be entitled to *immunity; ergo*, although petitioners would *not* have "confessed" *but for the promise of immunity*, they were not induced to confess.

The syllogism plainly involves a *non sequitur* because petitioners' failure to comply with the disclosure policy does not mean they were not *induced* by the policy's promise of immunity. Or, stated another way, the opinion commingles the question of whether immunity was earned with the separate question of inducement of evidence.

Whether petitioners fully complied with the disclosure policy is one question; whether the promise of immunity induced them to surrender confessional evidence is quite another. The latter is the only question involved.

The opinion (p. 6) concedes that petitioners' revelations of unreported, "exaggerated" gross income "might not have been made in the absence of the Treasury's offer," but (p. 8) that the inducement was not "unlawful inducement"; that petitioners attempted to hoodwink the Government into a "*flagrant misapplication of its lawful disclosure policy*" (p. 10). We italicize the last quotation because it demonstrates, we believe, that Part I of the opinion starts out to decide a question *as to admissibility of evidence* but *concludes with deciding that immunity was not earned*. Such a conclusion does not lead to, or justify,

a further conclusion that incriminatory evidence that never would have existed save for the promise of immunity may be introduced in a criminal trial.

Striking though the differences appear to be between the majority and dissenting opinions, it is to be noted that *both opinions agree that Bram v. United States*, 168 U. S. 532, *states the governing principle*—any confession "obtained by any direct or implied promises *however slight*" is not admissible. It is, therefore, possible, *once the question of admissibility of evidence is clearly separated from the question as to whether the believed conditions subsequent of the disclosure-policy were complied with*, for a majority of the Court to unite upon what is the obvious fact of this record, that a promise of immunity, considerably more than slight, caused this "confession" to be made.

d. The Effect of "Voluntary" Action Under the Confession Rule:

Under the confession rule it is no answer to say, as the opinion does, that petitioners went to Internal Revenue "voluntarily". As *Wigmore* says at pp. 251-252:

> "The term 'voluntary' then, as describing the absence of the vicious element which excludes a confession, is, in ultimate exactness, unsound. All conscious verbal utterances are and must be voluntary; and that which may impel us to distrust one is not the circumstance that it is involuntary, but the circumstance that the choice of a false confession is a natural one under the conditions. The choice of false confession is voluntary, but the false confession is associated with the prospect (namely, of escape from present harm) so tempting that it is not in human nature to resist it."

The foregoing well describes what has happened to the petitioners here. The Court believes that false material was prepared by petitioners with the "prospect" of there-

by escaping from "present harm"; but the opinion instead of progressing on to the logical conclusion that such material is excluded as untrustworthy for age old reasons that human nature will join confessional and exculpatory material without regard to the precise truth, to try to win proffered immunity, concludes just the opposite, *that its untrustworthiness makes it admissible*.

Neither the majority nor the minority opinions discuss the suppression question except viewed from the Fifth Amendment's privilege against self-incrimination. A full consideration of the common law confessional rule is justified upon a Petition for Rehearing.

We pointed out the existence of a confessions rule problem in our brief (pp. 72-75) and reply brief (p. 21), but regret that we did not stress it sufficiently then, or in our oral argument.

The question of voluntariness, if it may be raised at all, is a question for the jury:

In *Smith* v. *U. S.*, 348 U. S. 147, 155, this Court held that where, after denial of a defendant's pretrial motion to suppress evidence on the ground that it had been procured by fraud and deceit, the Court submitted the issue of voluntariness to the jury, that this question "* * * was properly submitted to the jury". In *Wilson* v. *U. S.*, 162 U. S. 613, 624, this Court said that if there is a conflict as to voluntariness of a confession that "* * * if the Court decides that it is admissible, the question may be left to the jury * * *".

The dissent here points out far more effectively than we can, that ultimately questions of this kind should be for the jury. All we can add to what the dissent says is to point out that in this case the jury never had a chance to decide whether the so-called confessional material here was "voluntarily" given. On the contrary, *the fact that petitioners had made a disclosure was turned into a tool*

for conviction: The Court instructed the jury, not merely that whether immunity should be granted because of any "so-called disclosure" depended upon facts they were not to decide, but that from the fact the defendants were on trial it would necessarily follow that any "alleged disclosure" had not freed them from prosecution (R. 2969); that:

> "The so-called disclosure policy of the Government which may have been evidenced by certain statements of the Treasury Department was primarily promulgated for the purpose of obtaining from various defrauding taxpayers confessions of their fraudulent attempts to defeat their income tax, and to make a disclosure to the Government of such fraud, and to honestly disclose the amount of the tax due, and to aid and assist the Government in all matters pertaining thereto. Whether a disclosure policy of the Government in order to grant them immunity from criminal prosecution has been made, is a matter for the Court to determine and not for the Jury, and the only purpose, the only purpose of admitting any testimony regarding any alleged disclosure of the defendants with respect to their income tax for 1945, and 1946, *is to enable the Jury to understand that the defendants contend that they attempted to make a disclosure and that certain statements and admissions were made to the Government on the assumption that they had made a disclosure.*
>
> "Consequently, any reference to any voluntary disclosure may be considered by you only in so far as it may throw light or bear upon the conduct of the parties during the time that the alleged disclosure was made, and whether they intended to violate the income tax laws.
>
> "The fact that the defendants may have assumed that their disclosure granted immunity to the Shotwell Company, and to the individual defendants herein, is no defense in this proceeding, and as I have stated, and I repeat again, it is only material in so far as it may bear upon the intent of the individual defendants, or

> the intent of the Shotwell Company to violate the income tax laws, and their good faith, or lack of good faith in doing that, which they did do in reference to their alleged disclosure, * * *".

e. A Specific Offer Was Directed to Petitioners: Effect Under the Privilege Rule:

Footnote 10 states "a quite different case would be presented if the offer of immunity had been specifically directed to petitioners in the context of an investigation, accusation, or prosecution". The Footnote believes that if a person under such "investigation, accusation, or prosecution" turned in material in such an environment it would have been inadmissible under the *Bram* test, [and] * * * "the truth or falsity of such a disclosure would then be irrelevant to the question of its admissibility".

The Court has overlooked that the District Court *did* find that such an offer of immunity *was* made to petitioners, in the context of an investigation, which they themselves had requested, and that they *were* told to turn in confessional material in order to avoid criminal prosecution. The District Court found (App. 1761):

> "It is fair to find from the evidence that Sauber informed Busby, as well as Cain, * * * to disclose the entire black-market premium receipts and to make a computation of all the alleged off-setting premium disbursements which Shotwell allegedly made for raw materials. And it is entirely probable that Sauber informed Cain and Busby that if they made an honest, bona fide voluntary disclosure there would be no criminal prosecution. * * *"

This was an offer "specifically directed to the petitioners" and "in the context of an investigation" just as surely as if petitioners had been standing before a police station sergeant. In the "context of an investigation" by Internal

Revenue, the police sergeant was not dressed in blue, but was personified by the Revenue Official. Under those facts, which existed here, "The truth or falsity of such a disclosure would then be irrelevant to the question of its admissibility." (Footnote 10.) Thus even under the 5th Amendment privilege rule there is ground for reconsideration and for a holding that the confessional documents, true or false, were not admissible.

If an Executive agency chooses, as did the Treasury, to make several statements of its policy, not wholly harmonious, must the citizen cull them over and rely only on the one least advantageous to himself as the present opinion implies (p. 7 and note 7 contrasted with dissent p. 13)?

Is it not necessary, if constitutional protections are to be preserved, to hold that when an Executive agency begins with lavish, unrestricted promises of immunity, it does so at its peril and with its eyes open, so far as use of self-incriminatory admissions thereby obtained may subsequently arise in a criminal trial?

And with the federal government, as vast and ramified as it is today, bidding to become more so, and peopled only by fallible human beings, it is essential that the courts jealously guard, and perhaps increase, the people's protections against their servants rather than to diminish them.

II.

LUBBEN'S PERJURY AND THE NECESSITY FOR A NEW TRIAL.

There are two underlying factual assumptions for the present opinion denying petitioners a new trial, despite Lubben's wilful "exaggeration" to the jury. They are, *first*, that there was not too great a disparity between the showing made on the new hearing and Lubben's original testimony. This we have demonstrated to be a gross misconception. The *second* erroneous assumption is that the District Court "did not abuse its discretion" (p. 13) in denying a new trial because it "did not initially address itself to the question whether Lubben's trial testimony was perjurious and * * * *was not asked to do so until after its opinion denying suppression had come down*" (p. 11). This assumption is equally erroneous:

While it is true that the District Court, on the new hearing, did not *initially* address itself to the question whether Lubben's trial testimony was perjurious, that was not because petitioners failed to request it so to do.

There has been no point in this lengthy controversy at which petitioners did not stoutly insist that Lubben was a liar and a scoundrel; *and such he surely has been found to be by other prosecutors and other judges* (see our orig. br. p. 87, opinion n. 17, and dissent n. 28). Sauber in substance was told this during the disclosure process (R. 2593); the lengthy cross-examination of Lubben on the jury trial went to the point (R. 978, *et seq.*); as did the arguments to the jury (R. 2886, 2887, 2890, 2895, 2898, 2902, 2910, 2911, 2914, 2915, 2936). Judge Nordbye well recognized from the outset that Lubben's character and credibility was a central issue, he instructed the jury that the defense contended Lubben's figures were "greatly ex-

aggerated" (R. 2964); eventually he said in 1954 that he, and the jury, believed Lubben; on post-trial motions he chided petitioners for attacking Lubben (R. 3018, 3073).

On the 1955-1957 appeal proceedings (the records and briefs of which were furnished to the District Court), petitioners repeatedly denounced Lubben as the congenital perjurer he is (see for example p. 5, Br. for Resp. No. 1, O. T. 1957).

During preliminary arguments in 1958 before taking of evidence on the new hearing, petitioners again asserted to Judge Nordbye that Lubben lied (App. 70, 90, 91). Government counsel then admitted to the court,

> "It has been their contention from the outset * * * that the Government's principal witness Lubben was the villain and a perjured Government witness." (App. 304.)

When the new hearing started the District Court remarked that Government counsel had been "forewarned" that through Huebner they might prove "*what perjuring Lubben did*". (App. 573). Extensive portions of the examinations of Graflund and Huebner on the new hearing went to this point. On argument at the close of the reopened hearing the point was made bitterly clear (App. 1689, 1716):

> "Now, *if the Court could see fit to revise its thinking*—Lubben has been declared a perjurer by the United States Department of Justice * * *. Lubben * * * is one of the world's most consummate and skilled liars * * *. They want these convictions affirmed. *They are trying to send people to the penitentiary on knowingly perjured evidence* * *." (App. 1689.)

The argument was replied to in rebuttal (App. 1744).

True, a formal motion for a new jury trial because of Lubben's perjury was not made until after the District Court again had denied suppression. Such motion, prior

to the new ruling, well might have been held premature. But the contention that Lubben was a perjurer and that petitioners had been convicted on "exaggerated", false evidence was made throughout the case.

We respectfully suggest that a majority of the Court will find it impossible, consistently with the record, to adhere to an opinion which erroneously states that the District Court was not asked to address itself to the question of Lubben's perjury until *after* its opinion denying suppression had come down. The record forbids such a statement.

Any notion that this Court can affirm on the theory that the District Court was not given a fair opportunity to deal with this question is without foundation. The fact is that Judge Nordbye made a monumental blunder in 1953 in concluding that Lubben was a pretty decent chap who temporarily had fallen into bad ways but had reformed (R. 3018, 3073). When petitioners in 1958 asked the District Court to reverse his thinking, to recognize Lubben as the utterly amoral, perjuring swindler he is, they asked more than the District Court could bring himself to do—he was not prepared to admit that he had been so completely fooled by Lubben in 1953 and had erred in not being governed by the testimony of outstanding, responsible Chicago citizens that they had known Cain and Sullivan for years and that they were men whose testimony should be believed (R. 2686-2704).

Proceeding upon the unfounded assumptions that there was but a "more apparent than real disparity" between Lubben and Huebner and that petitioners themselves were not enough impressed with Lubben's perjury to have raised an issue as to it before Judge Nordbye until *after* his second ruling on the suppression issue, the opinion at page 15 reduces the entire matter to one of a mere "subsequently discovered inaccuracy in the testimony of a wit-

ness." It is, for all of the reasons pointed out in the dissent and because of the facts we have tried to drive home in this petition, far more:

The Government presented, in the same case, but at separate times, two star witnesses for whom it vouched. One told one story and the other told a story which drastically contradicted the first. This Court presently holds that the first witness can be used to win for the Government before the jury; the second witness can be used to win for the Government before a court; but never the twain shall meet.

All questions of credibility and extent of the variance produced by a witness so important that this Court ordered an unprecedented new hearing are to be resolved solely by a judge who alone decides the extent of the inconsistencies, and alone decides whether the stories of the two witnesses when put together demonstrate that petitioners were fraudulent.

Article III, Section 2, clause 3 of the Constitution provides, "The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury * * *" The Sixth Amendment provides, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury * * *" But here petitioners have not had a trial on all of the evidence that the Government says is relevant and vitally important. On all of the evidence they have had only a bench trial, and by a Judge from out of their own district who was not equipped to decide, for example, the proper weight to be given to the testimony of important Chicago witnesses testifying as to petitioners' good reputation and credibility in a case in which credibility was vital.

Credibility is for the jury. *Glasser* v. *U. S.*, 315 U. S. 60, 80 (1942). In *White* v. *U. S.* (CA 4 1960), 279 F. 2d 740, at 747 the Court said it is:

> "an age-old proposition that it is for the jury, not the court, to pass upon and determine the credibility of witnesses . . ."

Even under the opinion's figures, much more those we have endeavored to explicate in the opening of this Petition, the Government's admitted contradiction of Lubben should be high enough to require a jury to pass on Lubben's credibility. In *U. S. v. Vardine* (CA 2, 1962), 305 F. 2d 60, there was an error by a government witness computing net worth of $1,999.00 out of a total of $13,922.00, and a new trial was ordered, the court saying:

> "While the 1953 error of $1,999 is small in comparison to the 1953 bulge of $13,922 shown on the government's net worth summary, it is impossible to tell how many of the factual questions the jury decided in the defendant's favor. In view of the other items in dispute, the $1,999 error might, therefore, have accounted for the entire 1953 bulge as it was found by the jury or it might have been sufficiently material in relation to the bulge found by the jury so that we should not second guess whether they would have convicted on this count. *See Flemister v. United States* (58-2 USTC ¶9904), 269 F. 2d 513, 517 (5 Cir. 1958)."

Similarly, in *U. S. v. Flemister* (5 Cir. 1958), 260 F. 2d 513, 517 a new trial was ordered because on a motion for a new trial defendant showed that a government witness had not shown an off-setting credit of $3,500. This was newly discovered after trial; for failure to give a new trial to show those facts to a jury, the case was reversed.

The dissenting opinion here points out (p. 23) that the Court is "wrong" in stating that the *Mesarosh* case may be distinguished on the ground that the conviction there may be regarded as, or was conceded to have rested on perjured testimony. A re-reading of *Mesarosh*, we submit, will persuade the Court that the dissent's criticism is valid, and, moreover, should persuade a majority of the Court (see 352

U. S. at p. 9) that the *Mesarosh* decision did not turn upon any question of technical perjury but simply upon the untruthfulness of important evidence.

If the present opinion means that even though there is a post-trial discovery that the star witness for the Government has told very serious untruths, nevertheless a conviction obtained thereby must stand unless there be either a technical finding of perjury (which necessarily would have to be made in a collateral proceeding), or unless the prosecuting officials concede that their star witness perjured himself (a thing not often to be looked for regardless of circumstances), it has deeply lowered Federal standards of integrity. We hesitate to believe that the Court actually means that in all instances before a new trial can be obtained because of untruthful Government evidence there must be a technical finding of perjury. "Surely 'justice requires no less,' * * * than * * * that a criminal conviction not be based on the testimony of untruthful or inaccurate witnesses". (Brennan, J. dissenting in *Pittsburgh Plate Glass Co. v. U. S.*, 360 U. S. 395, 407.)

No one can possibly say that if Lubben had confined his testimony, when before the jury in 1953, to something in line with the limits set by Huebner, who was vouched for by the Government in 1958, that the jury ever would have convicted petitioners.

The Crushing Effect of "Exaggerated" Affirmative Evidence Coupled With an "Exaggerated" Confession.

Legal arguments and constitutional niceties laid aside, we beg the Court to observe that the effect of Lubben's "exaggerated" affirmative evidence upon the jury cannot be considered in compartmentalized detachment from the "exaggerated" confession which petitioners had given, believing they did not face a criminal trial. As the Government admitted on the first appeal, its case to the jury depended on "two main arches," (1) Lubben's "exaggerated" testimony and (2) petitioners' "admissions", exaggerated, to avoid controversy and to achieve immunity, to fit Lubbeh's "exaggerated" claims.

While it might be said, although we think improperly, that error in either "arch" alone would not be sufficient to warrant a new trial, it cannot be said, we submit, consistently with justice, that citizens have been fairly convicted when the case against them was (1) "exaggerated" affirmative testimony, and (2) an "exaggerated" confession tailored for civil purposes, to fit the "exaggerated" affirmative claim. What chance, under such circumstances, did petitioners have?

We pray the Court to reconsider, for here were two directly related errors which marched hand in hand to doom petitioners. Prejudice is to be determined by viewing the record in its entirety. (*Kotteakos* v. *United States*, 328 U. S. 750, 764).

III.

ABUSE OF THIS COURT.

The Court has decided to excuse obtaining an order of remandment from it by withholding sworn testimony that utterly destroyed or exposed the falsity of many important allegations on which this court acted, on the ground that such withholding was merely "a mistake of judgment on the part of the Government." The Court is charitable.

The opinion says the issue tendered by the motion to remand was not whether the Government's new evidence "was true or false, but whether it warranted a re-examination of the suppression issue by the District Court." But whether it "warranted" further proceedings depended on its reliability and what it was worth in its "true colors." This Court had to make a determination of its worth. It determined, without the faintest knowledge that the affidavits tendered to it were, to the knowledge of the prosecutor, "glaringly inconsistent" with grand jury evidence given by the same affiants a few weeks or months before, were worthy. Certainly, in a trial court prosecutors are not permitted so to conduct themselves. *United States* v. *Zborowski* (2 Cir.), 271 F. 2d 661, 668 says that a prosecutor must disclose to a defendant that a prosecution witness had given contrary grand jury testimony for "our standards of fair play in Federal criminal proceedings require that the Government should present its evidence in its true colors and that it should never be a party to withholding any evidence which materially bears on the credibility of a witness * * *."

The Court has not agreed with our contentions on this head, but to say that they were "utterly extravagant" is to visit criticism on the undersigned we do not believe we are rightfully entitled to and is to give the prosecution an inferential accolade it certainly did not earn.

IV.

JURY SELECTION.

That the grand and petit juries were illegally composed admits of no serious contradiction.

Petitioners' objections are disposed of on the grounds of (a) tineliness, and (b) the statement (p. 21, n. 25) that: "It is not suggested that the contentions made here go to the individual qualifications of any seated grand or petit juror." In the latter statement the Court has gravely misapprehended both our position and the record. We do so assert. 9 of the seated grand jurors were volunteers *and thereby personally and individually disqualified* under the Illinois statute which had to be complied with in selection of this indicting grand jury; 1 of the petit jury was *similarly personally disqualified;* numerous others were recommendees of former grand jurors and undoubtedly several of them in fact had volunteered to their sponsors. See table of the juries appearing as Appendix D of Petitioners' brief.

We respectfully request that the jury points be re-examined for the decision cannot accurately rest on the assumption that personally unqualified persons did not serve on these juries.

V.

(a) The Lubben Testimony About Sullivan.

The Opinion (p. 22) states that Lubben's original testimony was "he had a conversation with Sullivan on or about February 14, 1946, concerning the advisability of paying the Black-Market overages by check." The effect of Lubben's recantation was to abandon completely any pretense he had any conversation *at any time* with Sullivan

about checks. Lubben said the *February* conversation *did not* take place; and in the fall:

> Lubben at R. 921: "* * * it wasn't in regard to those three checks * * *"
>
> At R. 921: "* * * it was not with reference to the checks * * *"
>
> At R. 922: "* * * it wasn't in regard to the checks * * *"

Lubben did not specify what was said in what he simply identified as "the conversation" with Sullivan in the fall (R. 921). Such abandonment of subject matter is a substantial recantation; yet it is the only testimony Lubben gave at all against Sullivan.

(b) The Roeser Testimony About Sullivan.

The Opinion at p. 23 believes Roeser turned over cash money to Sullivan. Roeser's testimony is to the contrary (R. 1721):

> "Q. Did you ever give any money to Sullivan?
> A. I don't believe so."

(c) The Ericson Testimony About Sullivan.

The Opinion at p. 23 believes Ericson got "instructions" from Sullivan. Ericson's testimony was that Sullivan *never* gave any instructions to him (R. 1818) and indeed Ericson *never* had any conversations with Sullivan relative to the operation of the business (R. 1820).

Nothing in the District Judge's opinions either on Sullivan's motion for acquittal (R. 3250-6) or for a new trial (R. 3268-75), supports the Opinion's conclusions of fact as to Roeser and Ericson in (b) and (c) above.

The District Judge's opinions note the "paucity" of evidence against Sullivan, and almost entirely rely on Lubben's recanted testimony. We thus approach the in-

structions in the framework of the jury trial having been a "close" case against Sullivan—the District Judge requested briefs on the motion for acquittal after oral argument, and studied it for six weeks.

(d) The Instructions.

The Opinion apparently concedes the instruction quoted at Opinion p. 24, standing by itself, was error. It was plain error for the Court to instruct the jury specific evidence "should be considered by you" to determine the "intent of the parties to wilfully violate the income tax laws or their good faith, or lack of good faith in the matter", which evidence, the Opinion states: "was not * * * admitted against Sullivan and should not be considered against him" (p. 24).

It was emotion charged evidence this instruction told the jury to consider to determine Sullivan's intent to commit the crime: Cain's so-called disclosure "admissions" and the disclosure documents. Other instructions had the same vice of recalling to the jury's mind evidence heard weeks before and telling them to weigh it all against all defendants, though it was not in evidence against Sullivan. Much of the evidence which the Majority Opinion finds damning was never admitted—and often not offered—against Sullivan but the instructions listed all that evidence, seriatim, and told the jury to consider it against *all defendants.**

* (a) Lubben's hearsay that the money went into petitioners' pockets was not admitted against Sullivan (R. 804, 814-5, 822) but 28 days later the jury was instructed to consider that evidence to determine "the issues in this case" (R. 2967-8); (b) Cain's cross-examination on the prior suppression hearing was not offered as to Sullivan (R. 1873, 1881, 1889) but was described as admissions by Cain the jury were told to consider against all (R. 2969); (c) conversations about checks were not admitted against Sullivan (R. 1893), but were recalled to the jury for use against Sullivan (R. 2953); (d) oral testimony about overages which was not admitted against Sullivan (R. 2984) was summarized as government evidence against all defendants (R. 2855-6).

Evidence which influenced this Court's opinion, likely influenced the trial jury, so prejudice from the instructions is demonstrated.

If we presume that "the jury conscientiously observed" (Op. p. 25) the instructions, we must presume they decided Sullivan's fate on prejudicial evidence (1) which was not admitted against him, and (2) much of which was never even offered against him.

The "Limiting" Instruction.

The Opinion believes this error was cured by a "limiting" instruction. That instruction said a "statement" or an "act" "is not binding" and is not "competent evidence" against "the absent defendants" if it occurred "not in the presence" of that defendant, or "in the absence" of that defendant.

The Cain testimony on the suppression hearing had been given in open court, "in the presence of" Sullivan. Under the "limiting" instruction that would make it admissible against Sullivan, but the Government did not offer it against anyone but Cain and the Corporation (R. 1869, 1881, 1889, 1938). Under the "limiting" instruction the jury would think they could use that evidence against Sullivan, especially when a specific instruction told the jury they *could* consider against Sullivan "the testimony regarding Cain's alleged admission as to the falsity or incompleteness of these tax returns". This was a clear instruction that the admissions of another were "testimony [which] should be considered" against Sullivan to determine—not some insignificant point—but his "intent * * * to wilfully violate the income tax laws * * *."

Thus, while the "limiting instruction is clear" (Op. p. 25) it clearly did not nullify the specifically bad instruction, and therefore did not cure the error even if it "be

presumed that the jury conscientiously observed it" (Op. p. 25).

Cautions During the Trial

The Opinion advances a second reason why the jury's deliberations would not have considered against Sullivan the evidence the bad instruction told them was to "be considered by you" against "the parties." The Opinion believes "The trial judge repeatedly cautioned the jury throughout the trial" that some evidence was not admitted or to be considered against Sullivan (p. 24).

The ruling that the disclosure documents were not to be considered against Sullivan was almost solely on one day out of weeks of a trial which had 75 witnesses and hundreds of exhibits (R. 2589, Oct. 9, 1953).

The ruling the Cain admissions were not admissible against Sullivan was made *out* of the presence of the jury (R. 1873) *after* it had been sent home for the day (R. 1870). When the jury came back the admissions were read with *absolutely no cautionary instructions at all to the jury limiting them as to* (R. 1941).[7]

The prosecutor in his Reply Argument to the jury (too late for answer, R. 2940) argued the disclosure documents and Cain's admissions indiscriminately against *all* defendants.

The factual situation was therefore that items excluded as to Sullivan long before the jury retired to consider their verdict were recalled to their mind by graphic descriptions of that very evidence by the judge, and the jury was told to consider that evidence against *all* defendants.

To such a factual situation the sole citation in the Majority Opinion (*United States v. Harris* (CA 7, 1954), 211 F.

7. This in itself was reversible error (*U. S. v. Kelinson* (CA 2, 1952), 205 F. 2d 600, 601).

2d 656, 659. Cert. denied 348 U. S. 822) has no application. In that case the 7th Circuit noted "the Court's instructions to the jury are not a part of the record before us" so the Court of Appeals assumed the instructions were correct and conscientiously followed by the jury. *Harris* did not presume to deal with a factual situation involving conflicting instructions, nor did the two authorities upon which it relied: *U. S. v. Spadaford* (CA 7, 1950), 181 F. 2d 957 where the court said at 959 "defendant does not complain about the instructions"; and *U. S. v. Sorcey* (CA 7, 1945), 151 F. 2d 899 which holds the jury would be presumed to have observed "the instructions of the Court" rather than a marshal who went to the jury room door. In our factual situation the applicable 7th Circuit decision would more nearly be *U. S. v. Donnelly* (CA 7, 1950), 179 F. 2d 227, 233: "where two instructions are given to the jury, one erroneous and prejudicial, and the other correct, since it is impossible to tell which one the jury followed, it constitutes reversible error."

Such a rule is followed by the 3rd Circuit: *Nicola v. U. S.*, 72 F. 2d 780, 787 "when an erroneous instruction has been given, it is not cured by a subsequent correct one, unless the former is withdrawn"; the 5th: *Patterson v. U. S.*, 183 F. 2d 687, 690; the 6th: *Smith v. U. S.*, 230 F. 2d 935, 939; the 8th: *McLean v. U. S.*, 253 Fed. 694, 696; the D. C. Cir.: *Byas v. U. S.*, 182 F. 2d 94, 98.

Mills v. U. S. (1918), 164 U. S. 644, laid down the rule reversing for conflicting instructions. In so ruling this Court rejected the thesis of the Majority Opinion here that error is cured if "it may be claimed that other portions of the learned court stated correctly the law" because "which of the two statements was received and acted upon by the jury it is wholly impossible for this court to determine" (p. 649).

Where there was, as at bar, one specific charge which was erroneous, and another charge which was correct, but general, conviction was reversed in *Bollenbach* v. *U. S.* (1946), 326 U. S. 607, 612: "If it is a specific ruling on a vital issue and misleading, the error is not cured by a prior unexceptional and unilluminating abstract charge." This warning was thought especially applicable to a case (such as Sullivan presents) where instructions permitted a jury to consider evidence against a defendant which was not admitted against him, in *Kotteakos* v. *U. S.* (1946), 328 U. S. 750, 776, and in *Delli Paoli* v. *U. S.* (1957), 352 U. S. 232. In the latter case the conviction was only upheld (against a dissent by Justices Frankfurter, Black, Douglas and Brennan) because petitioner conceded the clarity of the protecting instructions (p. 240).

Rulings of inadmissibility made during the trial are not enough. In *Anderson* v. *U. S.* (1948), 318 U. S. 350, at 356 there was a reversal because "while the trial judge appeared to admit the confessions 'only to be used against the persons who made them,' his charge bound the jury to no such restricted use of the confessions." *Lutwak* v. *U. S.* (1953), 344 U. S. 604 holds that the trial judge must make plain to the jury the limitations on use of the proof *both* "at the time of admission and by its instructions. * * *."

The instructions did not protect Sullivan from use of the excluded evidence by the jury. There is no way to presume the jury did not use it exactly as they were told they might do; if their use of such evidence "even were doubtful" a reversal is required. *Blumenthal* v. *U. S.* (1947), 332 U. S. 539, 551.

Sullivan respectfully asks that *Harris* v. *U. S.*, 211 F. 2d 656, cited to support the Opinion's holding against him on this point, and the authorities cited in this Petition for Rehearing, be re-examined. The present Opinion permits

an erroneous specific instruction to be cured by a generalized limiting instruction. Such a rule is new, and contains enormous potentials for erosion of our system of trials by correctly instructed juries.

CONCLUSION.

We are well aware that this case has been troublesome. The present decision however, we respectfully submit, lays down principles which the Court will find difficult to live with. We do not think that the Court would have arrived at the result it did arrive at, had it correctly understood the facts we have endeavored to make clear here. We respectfully pray a rehearing.

GEORGE B. CHRISTENSEN,

WILLIAM T. KIRBY,
Counsel for Petitioners.

CERTIFICATE.

George B. Christensen, a member of the Bar of this Court, certifies that the foregoing petition is presented in good faith and not for delay.

GEORGE B. CHRISTENSEN.

APPENDIX A

[illegible] PAYMENTS [illegible] MFG. CO.

	DATE OF PAYMENT 1944	AMOUNT	PAID TO	PLACE OF PAYMENT	PRINTED RECORD	TRIAL EXHIBIT	DATE OF PAYMENT 1944	AMOUNT	[illegible]	PLACE OF PAYMENT	DISPOSITION OF MONEY BY [illegible]	[illegible]
1)							1) Somewhere in November.	Approximately $ 8,000.	Lubben	New York. Either Penn. or Gotham Hotel	Gave it to Byron Cain. Got none of it back for himself. Used for "some special deal for the business" (app. 583)	106-110
2)	1945						2) Sometime in December 1944	Approx. $ 20,000.	Lubben	Shotwell Mfg. Company Office	Gave it to Byron Cain. Got none of it back for himself. Used for some special deal with Mr. H. [illegible] (app. 585)	111-113
3)	Jan. 19	$ 10,849.	Huebner	Penna. Hotel, New York. Sullivan was present.	Vol. 2, Pp. 811-821	27, 27-A, 162	3) Sometime in Jan. 1945	Between $ 10,000 and 11,000	Lubben	New York City Penn. Hotel	Gave package of currency to Byron Cain in hotel suite. Sullivan was present. Got none of it back for himself.	113-116
4)	Feb. 7	6,183.	Huebner	Chicago	Vol. 2, Pp. 820-822	28, 163	4)					
5)	After check dated Mar. 6 was cashed	18,000	Huebner	New York	Vol. 2, Pp. 823-828	40, 40-A 164	5)					
6)	Mar. 28 or 29	15,000	Huebner	Chicago	Vol. 2, Pp. 828-831	40-B, 40-C, 165	6) In the latter part of Mar. 1945.	$ 15,000	Lubben	In the Shotwell Mfg. Co. Plant (Chicago)	Gave it to Byron Cain. Byron Cain gave Huebner $5,000 back for himself.	122-124
7)	On or about May 3 and around May 9	24,527.13 6,459.75 30,986.88	Huebner	Chicago	Vol. 2, Pp. 831-841	40-D, 166, 43, 45, 167	7) First part of May 1945. (Around V-E day. SR 135)	Approx. $ 30,000	Lubben	Sherman Hotel (Chicago)	Gave it to Byron Cain at Belden-Stratford Hotel. (Chicago) Cain gave Huebner $10,000 back for himself.	135-138
8)	May 25 if in N. Y. or May 26 if in Chicago	4,455. 20,000. 24,455.	Huebner	Either Chicago or New York	Vol. 2, Pp. 841-846	48, 55, 55-A, 55-B	8) In the latter part of May 1945	Approx. $ 25,000	Lubben	New York City Penn. Hotel.	Gave $20,000 to Byron Cain in an automobile at Cicero and Irving Park, Chicago. Huebner took $5,000 from package of currency containing approx. $25,000 before giving $20,000 to Cain.	140-144
9)	June 28	5,524.	Huebner	Either Chicago or New York	Vol. 2, Pp. 847	55-A	9)					

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
1945 (Cont'd)												
10) Between Sept. 26 and Nov. 27	$ 30,000.00 [illegible],148.35 [illegible],148.35 ---Per Heitman's Testimony--- Close to [illegible] 14,[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
1946	Per Lubben's Testimony											
11) February	About $ 19,000.00 (Computations based on Lubbens's testimony as to Gov't Exh's 146, 14[illegible] 149 show actual payment as $17,[illegible]68.31	[illegible]	[illegible]	[illegible]	146,143 14[illegible] [illegible] are bills of lading for unbilled [illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible] (Sullivan in hosp. c/o penicillin rate 1949-)	[illegible]
12) Somewhere in neighborhood of early March	$ 1[illegible],[illegible]2[illegible]. (Computation based on Lubben's testimony as to Gov't Ex. 147	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]						
13) On or about March 29	$ 35,536.	[illegible]	New York	[illegible]	[illegible]	[illegible]	[illegible]	Between [illegible]	[illegible]	[illegible]	[illegible]	[illegible]
14) Within 1 or 2 days of Mar. 25	$ 1,488.	[illegible]	New York. [illegible]	[illegible]	101, 102	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
15) Sometime in April.	$ 14,000.	[illegible]	[illegible]	[illegible]	102	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
16) May	$ 1,450	Mrs. Krasne	New York	[illegible]	102	[illegible]						
17)	$ 8,450	To [illegible] by [illegible]	Chicago	[illegible]	102	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	189-193
18) May Friday and Saturday	---Per Heitman's Testimony--- $ 8,179. 6,038. $14,217.	[illegible]	Chicago	[illegible]	13, 92, 93	[illegible]	[illegible]	Approx. 15,000	Heitman	[illegible] Co, office. Chicago.	[illegible] to Byron Cain. [illegible] back $5,000	193-195

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CURRENCY PAYMENTS TO THE SHOTWELL MFG. CO.

	PER LUBBEN'S TESTIMONY						PER MULDNER'S TESTIMONY					
	DATE OF PAYMENT	AMOUNT	PAID TO	PLACE OF PAYMENT	REPORTED RECORD	TRIAL EXHIBIT	DATE OF PAYMENT	AMOUNT	RECEIVED FROM	PLACE OF PAYMENT	DISPOSITION OF MONEY BY MULDNER	SUPPLEMENTAL RECORD
	1946 (Cont'd)						1946 (Cont'd)					
19)	Unbilled shipments. Bills of lading. Gov't Exs. 151 and 152 dated 5/22 and 6/8	$27,322.67 (Computation based on Lubben's testimony). Vol. 2, Pp. 947-951 of printed record.	Huebner	Chicago or New York	Vol. 2, Pp. 947-951	151 and 152	19)					
20)	Unbilled shipment of [redacted] 9th. Bill of lading Gov't Ex. 154	$23,178.12 (Computation based on Lubben's testimony. Vol. 2, pp.951-956. $6,038 paid by Heitman-see item 18, supra. Bal. of $17,140.12 paid by Lubben).	Huebner	Does not know	Vol. 2, Pp. 951-956	154						
21)	Settlement sheet for shipments June 18 to July 15	$24,219				112,	Sometime in August 1946	Between $22,000 and $24,000	Lubben	Shotwell Mfg. Co. office.	Gave it to Byron Cain who said would use it for Saul Sullivan (App 636-7)	195-202
22)	Settlement for shipments July 22 to [illegible] 11	$29,510.63				120						
23)	August 20 [illegible]	$ 7,500 $35000 (Graf a Hudson with Levy R.569-577, Graf exs Ret.			Vol. 6 P. 2946	156,156-A	23) August. About 3 weeks after he received money from Lubben as shown in Item [illegible]	Approx. $7,500	Lubben	At the office of Shotwell	Gave it to Byron Cain who said would use it for Saul Sullivan	203-205
24)	October 14 (1) On or about day check was cashed, (2) Around October 12	(1) $12,235 (2) $10,000 $22,235	(1) Huebner (2) Huebner	Chicago	Vol. 2, (1) Pp.893-898 (2) 918-919	(1) 122,122-A, 122-C, 122-D. (2) 158	24)				Denies. Lubben Memo Transcript R. 569 572	
25)	Oct. 18	$25,929.81	Huebner. Then he said, " I believe this money was given to Graflund.	Chicago	Vol. 2, Pp.919-920	158-A	25) Sometime in the middle of October 1946	Between $26,000 and $27,000	Lubben	In New York. Gotham Hotel	Gave it to Byron Cain	206-207
26)	(1) Nov. 8 (2) Nov. (3) On or about date check was cashed (Nov 9)	(1) $13,146.70 (2) $ 2,004.00 (3) $ 319.50 $15,470.20	(1) Graflund (2) Huebner (3) Huebner	(1) Chicago (2) Chicago (3) Chicago	Vol. 2, (1) 927-933 (2) 901-903 (3) 898-901	(1) 160, 160-A, 160-B, 160-C, 126, 126-A, 126-B, 126-C, 126-D. (3) 124, 124-A	26)				Same	
27)	Dec. 20	Per Moran's Testimony $17, 190. 25	Huebner	Chicago	Vol. 3, P. 1293	133, 133-A	27) Sometime before Christmas in 1946, in Dec.	Approx. $18,000	Moran	In the hallway to the Shotwell Mfg. Co.	Gave it to Byron Cain. Cain gave him back $6,000	208-209

APPENDIX B

INDICTMENT IN COMPANION CONSPIRACY CASE

(Emphasis Supplied)

IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division

UNITED STATES OF AMERICA, *Plaintiff*, vs. HAROLD E. SULLIVAN, BYRON A. CAIN, LEON J. BUSBY, ERNEST J. SAUBER, and RALPH R. JOHNSON, *Defendants*.	No. 57 CR 149. February 27, 1957

COUNT ONE

The Grand Jury charges:

1. That from on or about June 21, 1948, and continuously and at all times thereafter up to and including the date of this indictment Harold E. Sullivan, Byron A. Cain, Leon J. Busby, Ernest J. Sauber and Ralph R. Johnson, hereinafter referred to as defendants, in the Northern District of Illinois, Eastern Division, and elsewhere, did willfully and unlawfully conspire, combine, confederate and agree together, each with the other, and with the Homan Mfg. Co., Inc., formerly The Shotwell Mfg. Co. (hereinafter referred to as Shotwell), Frank J. Huebner and Patrick J. Grace,

Jr., and with divers other persons to the Grand Jury unknown, all of which persons, named and unknown, other than the defendants themselves, will hereinafter be referred to as co-conspirators, said co-conspirators being not named as defendants or indicted herein:

(A) **To defraud the United States of America of income taxes due and owing to it by defendants Harold E. Sullivan and Byron A. Cain and co-conspirators Shotwell and Frank J. Huebner for the calendar years 1944, 1945, and 1946, by concealing**, causing the concealment of, and continuing to conceal from officers and employees of the United States, including officers and employees of the Bureau of Internal Revenue and the Internal Revenue Service of the United States Treasury Department (said Bureau and Service hereinafter referred to as the Internal Revenue Service), **the receipt, utilization and disposition of taxable income by defendants Harold E. Sullivan and Byron A. Cain and co-conspirators Shotwell and Frank J. Huebner during the years 1944, 1945, and 1946, in connection with transactions had during said years by co-conspirator Shotwell with one David G. Lubben**, the Eatsum Food Products Co., a sole proprietorship, the Eatsum Food Products Co., a partnership, General Confections, Inc., a corporation, and its wholly owned subsidiary, Reserve Trading Co.

(B) To defraud the United States of and concerning:

(1) The exercise of its governmental function and right of ascertaining, computing, levying, assessing, and collecting taxes due and owing to the United States of America for the calendar years 1944, 1945, and 1946 by defendants Harold E. Sullivan and Byron A. Cain and co-conspirators Shotwell and Frank J. Huebner, respectively, and of investigating, detecting and prosecuting violations of the internal revenue laws of the United States, free from bribery, unlawful impairment, obstruction, improper in

fluence, bias, dishonesty, false statements, misrepresentations, concealment, deceit, fraud and corruption;

(2) Its right to and interest in the conscientious, faithful, disinterested, unbiased and honest services, judgments, determinations and actions of defendants Ernest J. Sauber and Ralph R. Johnson, duly appointed employees of the Internal Revenue Service, concerning matters affecting and pending in and before the Internal Revenue Service, and to have such services, judgments, determinations and actions exercised free from bribery, corruption, dishonesty, improper influence, bias, partiality, **and fraud**;

(3) Its governmental function and right to have the business and affairs of the Internal Revenue Service, in the consideration, administration and disposition of matters affecting and pending in and before the Internal Revenue Service, conducted on its behalf fairly, honestly, **and free from fraud**, deceit, improper influence, partiality, concealment, interference, obstruction and corruption;

(4) The exercise of its governmental function and right of administering justice in the United States District Court for the Northern District of Illinois, Eastern Division, and of punishing violators of the internal revenue laws of the United States, free from interference, obstruction and impairment through the giving of **false, fictitious, and fraudulent testimony before the said Court** and before Grand Juries of the said Court.

(C) To commit certain offenses against the United States, to wit:

(1) **The crime of willfully attempting to evade and defeat a large part of the taxes due and owing to the United States of America** by co-conspirator Shotwell for the calendar years 1944, 1945, and 1946, in violation of Title 26, United States Code (I. R. C. 1939), Section 145(b);

(2) **The crime of willfully attempting to evade and defeat a large part of the income taxes due and owing to the United States of America by defendants Harold E. Sullivan and Byron A. Cain and co-conspirator Frank J. Huebner, respectively, for the calendar years 1944, 1945, and 1946,** in violation of Title 26, United States Code (I. R. C. 1939), Section 145(b);

(3) The crime of bribery in violation of Title 18, United States Code, Section 201;

(4) **The crime of knowingly and willfully making and causing to be made false, fictitious and fraudulent statements and representations in matters within the jurisdiction of agencies of the United States, to wit, the Internal Revenue Service and the United States Department of Justice,** in violation of Title 18, Section 80, United States Code (1946 Ed.); 18 U. S. C. 1001;

(5) The crime of perjury in violation of Title 18, United States Code, Section 1621;

(6) The crime of obstruction of justice in violation of Title 18, United States Code, Section 1503;

(7) The crime of violating Title 26, United States Code (I. R. C. 1939), Section 3793(b); and

(8) The crime of violating Title 26, United States Code (I. R. C. 1939), Section 4047(c)(3), (5) and (6).

The Grand Jury further charges that said unlawful conspiracy, combination, confederation and agreement was to be accomplished by the means and method and in the manner following:

4. It was a part of the conspiracy that the defendants and co-conspirators would conceal, cause to conceal, and would make continuing efforts to conceal from the Internal Revenue Service, the United States Department of Justice,

the United States District Court for the Northern District of Illinois, Eastern Division, and Grand Juries of said Court, that **defendants Harold E. Sullivan and Byron A. Cain and co-conspirators Shotwell and Frank J. Huebner received large amounts of unrecorded and unreported income during the years 1944, 1945, and 1946, and that they each owed the United States large amounts of tax for said years, by virtue of over-invoice premium payments in currency and other payments received in currency on certain sales of merchandise by co-conspirator Shotwell during the said years.** It was further a part of the conspiracy that the said concealment and efforts to conceal were to be aided and accomplished by various means, including, but not limited to, bribery, obstruction of justice, the making of and causing to be made false and fraudulent statements and representations to the Internal Revenue Service, **the submission of and causing to be submitted false and fraudulent papers and documents to the Internal Revenue Service**, the inducement of others to make false statements and representations to the Internal Revenue Service; the concealment and destruction of books and records, the obstruction, impeding and thwarting of investigations, inquiries and proceedings of the Internal Revenue Service, attempts to terminate and suspend investigations and inquiries being conducted by the Internal Revenue Service, attempts to influence, impede and obstruct witnesses and potential witnesses, and the giving of and causing to be given false, fictitious, and fraudulent testimony and representations to the United States District Court for the Northern District of Illinois, Eastern Division.

5. **It was a part of the conspiracy that the defendants and co-conspirators would make and cause to be made false and fraudulent statements and representations to the Internal Revenue Service, the United States Department of Justice, the United States District Court for the Northern**

District of Illinois, Eastern Division, and Grand Juries of said Court; concerning an alleged voluntary disclosure purportedly made to the Internal Revenue Service in 1948 by or on behalf of co-conspirator Shotwell.

6. It was a part of the conspiracy that the defendants and co-conspirators would attempt corruptly to obtain a settlement of tax cases concerning co-conspirator Shotwell for the years 1944, 1945, and 1946 at a figure greatly below the amount of tax due and owing to the United States by said Shotwell, although such action would result in the defeat and evasion of a large amount of taxes due and owing the United States for said years by defendants Harold E. Sullivan and Byron A. Cain and co-conspirators Shotwell and Frank J. Huebner.

* * * * *

OVERT ACTS.

The Grand Jury further charges that the defendants and co-conspirators, in furtherance of and for the purpose of carrying into execution said conspiracy, combination, confederation and agreement, did and performed the following and other overt acts, to wit:

1. On or about June 21, 1948, defendants Harold E. Sullivan and Byron A. Cain, in New York, New York, had telephone conversations with one H. Stanley Gratlund in Chicago, Illinois.

2. On or about June 23, 1948, defendants Harold E. Sullivan and Byron A. Cain and co-conspirator Frank J. Huebner had a conversation with co-conspirator Patrick J. Grace, Jr., in Brooklyn, New York.

* * * * *

6. In or about early July 1948, in Chicago, Illinois, defendant Harold E. Sullivan and co-conspirator Frank J. Huebner had a conversation with one Edward Urban and

discussed the matter of purchasing certain business interests of David G. Lubben for the purpose of acquiring and destroying books and records of David G. Lubben relating to black market transactions and other transactions with co-conspirator Shotwell.

7. In or about the latter part of July 1948, and in August 1948, in Chicago, Illinois, defendant Bryon A. Cain instructed H. Stanley Grathund and one Gladys Morrill to destroy or cause the destruction of records of black market currency received from David G. Lubben by co-conspirator Shotwell in 1945 and 1946.

* * * * *

10. In or about the latter part of July 1948, in Chicago, Illinois, defendant Byron A. Cain had a conversation with co-conspirator Frank J. Huebner, and said Byron A. Cain asked said Frank J. Huebner for $10,000 in currency to take care of and "fix" the tax difficulty they were in.

11. In or about the latter part of July 1948, in Chicago, Illinois, at the request of defendant Byron A. Cain co-conspirator Frank J. Huebner delivered $5,000 in currency to said Byron A. Cain to take care of and "fix" the tax difficulty they were in.

12. In or about the first week of August 1948, in Chicago, Illinois, defendant Leon J. Busby had a meeting and conversation with Internal Revenue Agent Joseph Lima and delivered to said Joseph Lima a paper containing false, fictitious and fraudulent figures and representations respecting unrecorded and unreported receipts and disbursements of currency by co-conspirator Shotwell during the years 1944, 1945, and 1946.

13. In or about August 1948, in Chicago, Illinois, defendant Byron A. Cain asked co-conspirator Frank J. Huebner for $5,000 in currency as part of the $10,000 in currency which said Byron A. Cain wanted to take care of and "fix" the tax difficulty they were in.

14. In or about August 1948, in Chicago, Illinois, at the request of defendant Byron A. Cain, co-conspirator Frank J. Huebner delivered $5,000 in currency to said Byron A. Cain to take care of and "fix" the tax difficulty they were in.

15. In or about August 1948, in Chicago, Illinois, defendant Ralph R. Johnson instructed Internal Revenue Agent Joseph Lima to make a tax computation and prepare an Internal Revenue Agent's report allowing unsubstantiated disbursements of currency claimed to have been made by co-conspirator Shotwell during the years 1945 and 1946.

19. In or about September 1949, in Chicago, Illinois, defendant Ernest J. Sanber had a conversation with Ernest C. Wright, then Internal Revenue Agent in Charge, about termination of an investigation Internal Revenue Agent Charles J. Mammel was conducting with respect to co-conspirator Shotwell.

21. On or about October 4, 1949, in Chicago, Illinois, defendants Harold E. Sullivan and Byron A. Cain had a conversation with Ernest C. Wright, then Internal Revenue Agent in Charge, and defendant Harold E. Sullivan stated to said Ernest C. Wright that he and said Byron A. Cain knew to whom overceiling disbursements had been made by or on behalf of co-conspirator Shotwell during 1945 and 1946, but that they would not tell said Ernest C. Wright.

24. On or about November 2, 1950, in Chicago, Illinois, defendants Harold E. Sullivan and Byron A. Cain, in a conversation with Internal Revenue Agent in Charge Ernest C. Wright, stated that they wanted Internal Reve-

nue Agent Charles J. Mammel removed from the investigation of co-conspirator Shotwell, and defendant Harold E. Sullivan stated to said Ernest C. Wright that he and defendant Byron A. Cain did not know to whom overceiling payments were made by or on behalf of co-conspirator Shotwell during the years 1945 and 1946.

25. On or about November 17, 1950, in Washington, D. C., defendant Byron A. Cain had a conversation with Commissioner of Internal Revenue George C. Schoeneman and complained about the length of time of the investigation of co-conspirator Shotwell.

26. On or about November 20, 1950, in Chicago, Illinois, defendant Byron A. Cain falsely stated to Internal Revenue Agent Charles J. Mammel that 50 percent of the money listed in papers submitted to the Internal Revenue Service as having been received by or on behalf of co-conspirator Shotwell from David G. Lubben as overceiling premiums and for uninvoiced shipments of merchandise was in fact trades and not money.

27. On or about May 9, 1951, Daniel A. Taylor, then attorney for co-conspirator Shotwell, had a conversation with Special Agent Sam Krane and Internal Revenue Agent Charles J. Mammel wherein he asserted that all of the unrecorded and unreported currency received by co-conspirator Shotwell during the years 1944, 1945 and 1946 was, with the exception of $5,898, paid out by co-conspirator Shotwell for the purchase of raw materials.

28. In or about the summer of 1951, in Chicago, Illinois, Daniel A. Taylor, then attorney for co-conspirator Shotwell, had a conversation with Special Agent Sam Krane wherein he asserted that a large part of the over-invoice premium collections listed in papers submitted to the Internal Revenue Service as having been received by co-conspirator Shotwell during 1944, 1945, and 1946 was

actually "trades and exchanges" on which no money was received by or on behalf of co-conspirator Shotwell.

33. On or about November 12, 1952, in the United States District Court for the Northern District of Illinois, Eastern Division, Chicago, Illinois, defendant Byron A. Cain gave false testimony concerning an alleged voluntary disclosure purportedly made to the Internal Revenue Service in 1948 by or on behalf of co-conspirator Shotwell.

34. On or about November 12, 1952, in the United States District Court for the Northern District of Illinois, Eastern Division, Chicago, Illinois, defendant Leon J. Busby gave false testimony concerning an alleged voluntary disclosure purportedly made to the Internal Revenue Service in 1948 by or on behalf of co-conspirator Shotwell.

35. On or about November 13, 1952, in the United States District Court for the Northern District of Illinois, Eastern Division, Chicago, Illinois, defendant Ernest J. Sauber gave false testimony concerning meetings and conversations he allegedly had in 1948 with defendants Byron A. Cain and Leon J. Busby.

36. On or about November 13, 1952, in Chicago, Illinois, defendant Byron A. Cain had a conversation with co-conspirator Frank J. Huebner concerning the date of an alleged voluntary disclosure to the Internal Revenue Service.

37. On or about October 9, 1953, in the United States District Court for the Northern District of Illinois, Eastern Division, Chicago, Illinois, defendant Byron A. Cain gave false testimony concerning a conversation he purportedly had with David G. Lubben in September or October, 1945, regarding the time of commencement of over-invoice premium payments on certain sales of merchandise by co-conspirator Shotwell; concerning the period dur-

ing which over-invoice premium payments were received on certain sales of merchandise by co-conspirator Shotwell; concerning the amount of over-invoice premium payments and other payments received during the years 1945 and 1946 on certain sales of merchandise by co-conspirator Shotwell; and concerning meetings and conversations with David G. Lubben and Samuel Davids... in about June 1948 and in about August 1951.

38. On or about October 9, 1953, and October 12, 1953, in the United States District Court for the Northern District of Illinois, Eastern Dvision, Chicago, Illinois, defendant Harold E. Sullivan gave false testimony concerning the receipt by him of black market money paid by David G. Lubben in 1945 and 1946; concerning meetings and conversations with David G. Lubben in 1945 and 1946; concerning his knowledge of overceiling premium transactions involving David G. Lubben; and concerning his knowledge of uninvoiced shipments of merchandise by co-conspirator Shotwell in 1946.